

# Are Pre-Employment Misrepresentations Sufficient Grounds For Just Cause?



**In the first episode of “Suits”, Mike Ross induces Pearson Hardman to hire him as a lawyer despite never attending law school. With the help of partner, Harvey Specter, Mike misrepresents his employment credentials to the firm for a significant amount of time, until the lie begins to unravel over the course of the show.**

While most employees do not misrepresent their credentials to the extent of Mike Ross, it is not uncommon for employees to misrepresent their employment credentials in the pre-employment relationship. Depending on the context, such a misrepresentation may allow an employer to terminate an employee for just cause. However, in certain cases, a misrepresentation at the pre-employment stage of the employment relationship will not constitute just cause, and thus termination may not be justified. In this article, we provide below examples from the case law where these issues have been considered.

## **Misrepresentation Examples**

In *Clark v Coopers & Lybrand Consulting Group*,<sup>1</sup> the plaintiff was working for an IT company. Prior to commencing employment, the plaintiff represented to the employer that he had obtained an Honours Bachelor of Science in Physics, a Masters of Science in Physics, and a PhD in Applied Mathematics. The partners at the company were impressed with the plaintiff’s credentials, and were in the process of making him a partner. However, one of the partners became suspicious and investigated the plaintiff’s academic qualifications. After some research, it became apparent that the plaintiff had never attended a university.

Before the Ontario Superior Court of Justice, it was found that the plaintiff fraudulently misrepresented his credentials to the employer, and that the employer would never have hired the plaintiff had he accurately represented his qualifications. As a result, the Court found that there was just cause to terminate the plaintiff.

However, not every case is as extreme as the situation in *Clark*. In *Islip v Coldmatic*,<sup>2</sup> at issue was whether the plaintiff’s pre-contractual false representation of his previous salary constituted just cause for termination. In particular, the plaintiff made a representation, in respect of negotiating a salary with a

prospective employer, that his previous salary was \$75,000. In reality, his previous salary had been \$61,000. This misrepresentation ultimately culminated in the plaintiff being terminated.

At the Court of Appeal, it was found that the plaintiff knew the representation was false, and intended for the employer to rely upon the representation. However, the Court found that there was evidence that the employer would have paid the plaintiff \$75,000 and entered into the employment relationship even if it had known that his previous salary was \$61,000. For this reason, the misrepresentation was found to not be serious enough to warrant grounds for dismissal.

Finally, in *Kelly v Norsemont Mining Inc.*,<sup>3</sup> the employer alleged they had just cause to terminate the plaintiff as a result of misrepresentations during the hiring process. Namely, the employer claimed that the plaintiff represented that he:

- was a successful stockbroker with contacts in the industry
- could raise \$4 million for the employer
- had another job opportunity when he was hired by the employer, and
- he would be able to obtain a reference letter from a previous supervisor.

Despite these allegations, which if proven would have likely led to a finding of just cause for termination, the employer was unable to establish that the representations were untrue at trial. This was because they called witnesses who were vague and unreliable rather than those who had direct knowledge of the misrepresentations. For this reason, there was an absence of just cause, and the plaintiff was entitled to damages for wrongful dismissal.

## Key Takeaways

Employees may be terminated for misrepresentations they make in the pre-employment relationship. However, not every misrepresentation will be enough to terminate an employee with just cause. Where a misrepresentation specifically relates to an employee's qualifications and is sufficiently serious to constitute going to the heart of the employment relationship, just cause will likely be made out.

Employers should ensure that, when posting employment positions, job requirements are specifically set out. Employers should also regularly conduct background and reference checks of the individuals they choose to employ to ensure that the information they have been provided is accurate. Where a misrepresentation is identified, employers should not rush to a conclusion and should instead take steps to establish the facts and assess the severity of the breach before deciding whether to terminate an employee for just cause. Relatedly, proving just cause requires more than simply alleging a list of serious misrepresentations by the employee. As can be seen from *Kelly*, any witnesses who are called to support such claims must be reliable and have direct knowledge of the misrepresentations at issue.

Conversely, employees should ensure that, when applying for jobs, they do not overstate their qualifications, truthfully state the education they have obtained, and honestly list their skills and abilities.

## Footnotes

1. *Clark v Coopers & Lybrand Consulting Group*, [1999] OJ No 4284 (aff'd in [2002] OJ No 3456) [*Clark*].

2. *Islip v Coldmatic Refrigeration of Canada Ltd*, 2002 BCCA 255 [*Islip*].

3. *Kelly v Norsemont Mining Inc*, 2013 BCSC 147 [*Kelly*].

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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