

Cause For Dismissal: The Importance Of Context



When an employer has cause for dismissal, the employer can terminate an employee without notice or severance pay. Because of the harsh consequences of a termination for cause, an employer must be able to prove that dismissal in this manner is justified.

There are a variety of circumstances that may justify a termination for cause. Certain misconduct can be reason for dismissal, but not all misconduct will be significant enough to justify dismissal. When determining whether an employee's misconduct justifies cause for dismissal, courts will consider whether the misconduct was significant enough to permanently damage the employment relationship.

In [Café La Foret ltd v. Cho, 2023 BCCA 354](#), the Court of Appeal found that an employee's sexual harassment claim was not enough to justify cause for dismissal. This case serves as a reminder to employers that context plays an important part in whether dismissal is justified.

Mr. Cho, a 60-year-old head baker had been working at Café La Foret (the "Café") for 19 months when he was terminated for cause. Mr. Cho was working with Ms. Lee, an assistant baker. One day, Mr. Cho touched Ms. Lee's shoulder and buttock without her consent while telling her about a massage he received.

When the general manager met with Mr. Cho to discuss his behavior, Mr. Cho admitted to the misconduct, attributing it to a mistake. He asked if he should apologize or quit his job. Mr. Cho was asked to go home and was later advised not to attend work the following day. A few days later Mr. Cho was asked to sign an apology that Ms. Lee could later use to report the incident to the police. Mr. Cho refused and was terminated from his employment. Mr. Cho's case went to trial.

The Trial Decision

In the [trial decision](#), Justice Shergill found that Mr. Cho's conduct was sexual harassment but characterized it as relatively minor, reflective of poor judgment rather than bad faith intent. Justice Shergill also found that the employer was willing to remediate the misconduct by way of apology and determined that the misconduct in this context was not significant enough to irrevocably damage the employment relationship. The misconduct was therefore not sufficient to justify cause. The Café's lawyers appealed the trial decision.

The Court of Appeal

The Court of Appeal agreed with Justice Shergill. Counsel for the Café argued that the trial judge inappropriately considered irrelevant factors, such as the Café's willingness to remediate the relationship and Mr. Cho's intent.

In rejecting the Café's argument, the Court of Appeal emphasized the importance of context. The Court of Appeal clarified that an employer's willingness to save the employment relationship should not be misconstrued as an admission of the misconduct's insignificance. Instead, it is one of many factors to be considered in determining whether misconduct is significant enough to permanently damage the employment relationship.

Intent was another factor properly considered in this case. The Court of Appeal found an employee's intention can be a factor in assessing the salvageability of the employment relationship.

It is not always easy to determine whether an employee's misconduct is sufficient to justify dismissal. Employers should always consult a lawyer before dismissing an employee for cause.

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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