

When Is Recording At Work Grounds For Dismissal? A Case Of Nuance And Context



In an age where technology makes recording conversations easy and common, a recent wrongful dismissal case (*Wan v H&R Block Canada Inc.*, [2024 ABKB 734](#)) raises important questions about privacy, workplace ethics and the boundaries of “for cause” termination. The matter offers insight into the complexity surrounding after-acquired cause—that is, justifying a dismissal based on evidence discovered after the termination decision.

Background of the Case

The plaintiff was terminated by the employer for cause due to the alleged dissemination of confidential information at a conference. During the litigation, the employer asserted after-acquired cause based on the plaintiff’s previously undisclosed practice of recording workplace meetings without the knowledge or consent of others.

The employer sought summary dismissal of the wrongful dismissal claim, focusing on whether the recordings themselves justified termination. This application for summary dismissal was ultimately denied, with the judge determining the matter required a full trial to consider the nuances and context.

The Role of After-Acquired Cause

After-acquired cause allows an employer to justify a termination based on misconduct discovered after the employee has been dismissed. However, the bar is high for employers relying on this doctrine. The courts must carefully weigh the nature of the misconduct, the employee’s intentions and the broader context of the workplace environment.

In this case, the employer’s argument centered on the plaintiff’s surreptitious recordings. While the recordings weren’t initially known at the time of dismissal, they were later revealed during litigation.

What the Case Law Says About Recording

The court referenced two key cases to illustrate how the law approaches employee recordings:

1. *Rooney v GSL Chevrolet Cadillac Ltd*, [2022 ABKB 813](#)

In this case, recordings made by an employee were deemed justified due to significant power imbalances and unfair treatment by the employer.

2. *Shalagin v Mercer Celgar Limited Partnership*, [2022 BCSC 112](#)

Here, recordings were found to breach ethical standards and justified termination, particularly because the recordings captured sensitive information irrelevant to workplace issues.

Both cases highlight that the legality and ethics of workplace recordings are context dependent. The intention behind the recordings and the workplace dynamics plays a crucial role in determining whether such actions amount to just cause for termination.

Key Findings in This Case

The judge made several critical observations:

1. **No Explicit Policy Violation:** The employer's code of conduct did not specifically prohibit recording meetings.
2. **Ethical Versus Legal Considerations:** While recording without consent can be seen as unethical, it is not inherently illegal. The judge emphasized that recordings must be considered within the broader context of workplace conditions and employee motivations.
3. **Credibility and Context:** The judge noted that the case involved nuances around the plaintiff's motivations, workplace pressures and the environment. These subtleties required a full trial where witness credibility could be assessed.
4. **Prior Encouragement to Record:** Importantly, the plaintiff was advised by a former company president to consider recording conversations with a difficult employee. This fact further complicated the employer's argument for after-acquired cause.

Why a Full Trial Was Necessary

Given the complexities, the judge ruled that summary dismissal was inappropriate. The issues at hand could not be resolved fairly based on the paper record alone. Instead, a full trial would allow for a comprehensive examination of the facts, including witness testimony and workplace context.

Key Takeaways for Employers

- **Clear Policies Are Crucial:** Employers should have explicit policies on recording in the workplace and ensure employees are aware of these rules.
- **Context Matters:** The motivation behind an employee's actions and the workplace environment can significantly influence the outcome of wrongful dismissal claims.
- **Privacy and Ethics:** Recording without consent may not always justify termination, particularly if the recordings are made to protect the employee from unfair treatment.

This case underscores that in employment law, black-and-white rules are rare. Nuance, context and fairness remain central principles in deciding what constitutes just cause for dismissal.

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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