Workplace Investigations: Perfection Is Not The Standard

A recent decision of Ontario’s Superior Court of Justice provides helpful guidance to Ontario employers on the standard of workplace investigation in the context of a termination for cause. The Court also provides helpful commentary dealing with claims of moral damages and damages for variable compensation.

In *Arora v ICICI Bank of Canada*, 2024 ONSC 4115, the Court confirmed the longstanding principle that where an employee is being investigated for misconduct, they do not have a free-standing right to a certain kind of investigation—the standard of an investigation for employers is not perfection. An imperfect investigation can still support an employee’s termination for cause because any flaws in the investigation speak to the weight of evidence and not the fundamental question of whether there is cause to terminate.

Background

Mr. Arora had worked for the bank for 15 years, most recently as an assistant vice president, until he was terminated for cause for breaching the duties and obligations he owed to his employer, including competing with the bank and disclosing confidential information.

Prior to the investigation, the bank’s internal data leakage prevention program flagged a possible data leakage, including the sharing of sensitive information and other violations emanating from Mr. Arora’s emails. This triggered an investigation by the bank.

As part of the investigation, Mr. Arora was called into a meeting, ostensibly to “discuss his work”. However, without warning to Mr. Arora the meeting was instead with human resource professionals who questioned him regarding the concerns flagged by the data leakage prevention program. When presented with the allegations, Mr. Arora was not transparent about his activities and failed to clarify inconsistencies in writing following the investigation meeting. He was subsequently terminated for cause.

Mr. Arora commenced a wrongful dismissal claim, alleging that the investigation was flawed for two reasons:

1. He was not warned about the content of the investigation meeting, which he

claimed contributed to his dishonesty when questioned by the Bank.
2. The Bank did not interview individuals, both internal and external to the Bank, who Mr. Arora identified as having engaged in similar activities.

The Decision

Ultimately, the Court upheld the termination for cause and dismissed Mr. Arora's claim. While Mr. Arora had no prior disciplinary record, the court found that his misconduct undermined the foundation of the employment relationship by breaching the essential duties of loyalty, honesty and good faith.

In its reasons, the Court held that the Bank's investigation was adequate, confirming:

- Employees do not have a free-standing right to a certain kind of investigation. Where an employer is provided with information during an investigation, the employer need not review every named person if legitimate business concerns exist.
- When an investigation is flawed, that does not automatically invalidate the possibility of terminating an employee for cause. Rather, flaws go to the weight of evidence and do not impact the underlying question of whether there was cause to terminate an employee.
- Mr. Arora's own dishonesty impeded the Bank's ability to conduct an effective investigation and consequently could not be relied on to challenge the adequacy of the investigation.

The Court dismissed Mr. Arora's claim for moral damages (i.e., compensation afforded to employees for injury or harm suffered by an employer's conduct). Despite the Court finding that certain of the Bank's post-termination conduct—which included pressuring Mr. Arora to accept a settlement with an overbroad restrictive covenant, threatening costs, and initiating a counterclaim (which it dropped on the eve of trial)—went beyond mere "litigation tactics", the Court declined to award moral damages and instead held that the issue was more appropriately addressed by costs.

The Court also provides helpful commentary for employers on the treatment of variable compensation in the context of a termination. The Court dismissed Mr. Arora's claim for his bonus and equity entitlements, finding that the governing documents clearly ousted his entitlements if terminated for cause. The employee handbook provided that employees must be active on the date of disbursement to be eligible. The stock option plan specified that if terminated for cause, defined as "any act detrimental to the interests of the Bank," any options will immediately cease vesting and vested but unexercised options will cease to be exercisable and immediately expire.

Key Takeaways for Employers

This decision is a welcome reminder for employers that the standard of a workplace investigation is not perfection. Rather, an investigation should focus on obtaining the necessary information and evidence to make a relevant determination. An employee's misconduct, if sufficiently serious, can amount to cause at law, even in the absence of a proper investigation.

The case also highlights that employees have a commensurate duty in facilitating an adequate investigation process and owe a duty of loyalty, honesty and good faith to their employers in the course of their employment (even if they are not deemed fiduciaries). Where those essential duties are breached, an employer may have cause to terminate employment.

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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