

# Publisher's Note

**2022 – Release 1**

Previous release was 2021 – 2

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Rudner

# You're Fired! Just Cause for Dismissal in Canada

*You're Fired! Just Cause for Dismissal in Canada* is a guide for professionals on the law of summary dismissal in Canada, which is a debatable area as there are no hard and fast rules. While providing a thorough understanding on various causes of dismissal, the publication also helps to understand the types of behaviours that can constitute just cause for dismissal, the requirements for appropriate investigations prior to dismissal, and key cases where courts have considered allegations of just cause for dismissal.

## What's New in This Release:

This release updates the case law and commentary in Chapters 3 (The Contextual Approach), 5 (Dishonesty), 6 (Conflicts of Interest), 10 (Breach of Rules of Policies), 14 (Harassment), 16 (Intoxication/Alcohol and Drug Use), 17 (From Cyber-Slacking to Cyber-Stalking: Abuse of Technology and Social Media), 19 (Performance Issues/Incompetence/Neglect of Duty), 20 (Off-Duty Conduct (Including Online Behaviour)), 21 (After-Acquired Cause (After-the-

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Fact Evidence), 25 (Progressive Discipline in the Non-Unionized Environment), 26 (Investigations), and 27 (Human Rights Considerations).

This release also features the addition of 35 detailed case summaries to the Case Summaries section of the text. Each digest includes a detailed summary of the facts and legal analysis in the decision as well as information about findings related to discipline, just cause and damages. Summaries added in this release include decisions by courts, arbitrators, boards and tribunals from Saskatchewan, British Columbia, Ontario, Alberta, Nova Scotia, Manitoba, and the federal jurisdiction.

The release also updates the New Developments section with approximately 100 digests of court, statutory and arbitration decisions from October 2020 to December 2021 on issues relating to just cause.

## Highlights

- **HARASSMENT — SINGLE INCIDENT VS. PATTERN OF CONDUCT — REFUSING TO APOLOGIZE FOR HARASSMENT** — In *Hucsko v. A.O. Smith Enterprises Limited*, 2021 CarswellOnt 17635, 2021 ONCA 728, the employer investigated allegations that the plaintiff had harassed a female co-worker. After determining that several comments constituted sexual harassment, the employer directed the plaintiff to take sensitivity training and to apologize to his co-worker. The plaintiff agreed to take sensitivity training but refused to apologize. The employer terminated the plaintiff for cause, which termination was ultimately upheld by the Court of Appeal. The plaintiff's termination for cause was proportional and warranted given his total lack of contrition, failure to recognize the seriousness of his misconduct, and refusal to comply with a reasonable requirement to apologize. (In addition to the discussion of the case in Chapter 3, this decision is digested and analyzed in the New Developments and Case Summaries sections of the text, as updated in this release.)
- **PERFORMANCE ISSUES/INCOMPETENCE/NEGLECT OF DUTY — SINGLE INCIDENT AS JUST CAUSE — NEGLIGENCE OF PARAMEDIC** — In *Jegou v. Canadian Natural Resources Limited*, 2021 CarswellAlta 1263, 2021 ABQB 401, the plaintiff paramedic was called to a site to treat an individual showing symptoms of a stroke. The employer's guidelines required that the patient be rapidly transported to a stroke centre for care. Instead of doing so, the plaintiff took the patient to a nearby clinic first. The patient was ultimately transferred to hospital and suffered no harm. The employer terminated the plaintiff's

employment for cause. The Court of Queen's Bench upheld the dismissal, finding that the paramedic was not entitled to substitute his own judgment in the face of the employer's clear protocol that did not establish alternative from which the plaintiff could choose. The lack of ultimate harm to the patient was irrelevant, where the potential for harm was sufficient to establish just cause. (In addition to the discussion of the case in Chapter 19, this case is analyzed in the Case Summaries section of the text, as updated in this release.)

- **INVESTIGATIONS — THE IMPORTANCE OF AN INVESTIGATION — NO INDEPENDENT DUTY TO INVESTIGATE** — In *McCallum v. Saputo*, 2021 CarswellMan 222, 2021 MBCA 62, the employer received allegation that the plaintiff had taken product from one of its customer's stores without authorization. The employer terminated the plaintiff's employment without conducting any further investigation. The trial judge dismissed the plaintiff's action on the basis that the plaintiff had committed the alleged misconduct, and that the employer was not required to investigate. The Court of Appeal denied the plaintiff's appeal. An employer's obligation to investigate before dismissing an employee was a practical and cautionary one, not a free-standing legal duty. In Manitoba, employers are not inherently required to comply with standards of natural justice or duties of procedural fairness before dismissing an employee. (In addition to the discussion of this case in Chapter 26, this decision is digested and analyzed in the New Developments and Case Summaries sections of the text, as updated in this release.)