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YOU'RE FIRED! JUST CAUSE FOR DISMISSAL IN CANADA

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Publisher's Special Release Note 2023

The pages in this work were reissued in June 2023 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the June 2023 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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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 also features the addition of 21 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.

Highlights

- **OVERVIEW — THE CONTEXTUAL APPROACH — MITIGATING FACTORS — THE INTENT OF THE EMPLOYEE** — An Alberta arbitrator's decision in *Alberta Justice and Solicitor General and AUPE (869395), Re* provides a compelling example of how important the intent of the employee can be when assessing whether or not the employment relationship has been irreparably harmed, the use of the “n-word” in one case was found not to constitute just cause for dismissal. The Arbitrator found that the employee's passion about the subject — music — overrode her better judgment but found that the Employer did not have just cause for termination. The Arbitrator also noted that context and intention were both also relevant, noting a wide disparity between calling an individual a slur and quoting the same slur to criticize its use in music.
- **GROUND FOR DISMISSAL — THEFT — IMPACT OF THEFT BY EMPLOYEES ON THE EMPLOYER — TIME THEFT** — With the prevalence of remote work, many employers have become increasingly suspicious that some workers are not actually at work when they should be or claim to be. Many employers have resorted to tools such as keystroke and mouse movement trackers, perhaps predictably leading to a response from some employees who employ countermeasures such as apps that will move one's cursor for you. The British Columbia Civil Resolution Tribunal's decision in *Besse v. Reach CPA Inc.* upheld the summary dismissal of an employee for time theft (and dismissed that employee's wrongful dismissal claim), but also ordered that employee to repay her former employer for over 50 hours of wages for unaccounted time as shown on the employer's timekeeping software.
- **GROUND FOR DISMISSAL — INTOXICATION/ALCOHOL AND DRUG USE — ISSUES RELATING TO ALCOHOL AND DRUG USE — HIGH IN A SAFETY SENSITIVE POSITION** — In *NAV Canada and IBEW, Local 2228 (Malhi), Re*, an Alberta arbitrator allowed a grievance challenging the termination of an air navigation system employee for marijuana use while assigned to a training course at an employer training centre. The employee — someone employed for 12 years and in a safety-sensitive position — acknowledged using

marijuana to address a personal matter (the recent suicide of a family member). Arbitrator D.P. Jones overturned the employee's dismissal. The Drug and Alcohol Policy did not outright prohibit the use of marijuana by employees. Instead, the policy prohibited two specific things: (1) being impaired on the job by marijuana, and (2) being in possession of marijuana on company property without a medical prescription that had been disclosed to the company. The company had presented no evidence that the employee was impaired on the job by his marijuana use. There was little or no evidence that the relevant decision-makers for the company knew or considered the employee's distress caused by his family member's recent suicide — a significant mitigating factor.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages