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feature

Angry Letters to Your Boss Can Get You Fired

Going from a bad day at the office to just cause

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We have all seen or heard about infamous complaint letters from disgruntled employees and until now, have largely chalked it up to a bad day at the office. Such letters would be dusted under the carpet and employers were told there was nothing they could do about it. This is no longer true. Both the British Columbia and Ontario Courts of Appeal have had occasion to consider controversial letters from employees and determined the letters constituted just cause for termination of employment. The obvious question arising from these cases is how bad does the content and tone of a letter have to be to constitute just cause?

In Grewal v. Khalsa Credit Union, 2012 BCCA 56, the relationship between the employee and employer was one of discontent. An issue arose concerning a home mortgage obtained by Ms. Grewal from the Credit Union. The Chief Executive Officer brought it to the attention of the Board of Directors and sought legal advice. He then requested a meeting with Ms. Grewal to discuss the mortgage renewal matter and other ongoing concerns. The day after the meeting, Ms. Grewal's lawyer delivered a letter to the Credit Union. The letter alleged serious unwarranted invasions of Ms. Grewal's privacy, complained of statements in relation to the mortgage matter and demanded a wide ranging retraction and apology. The letter threatened action in the event an apology was not provided. Ms. Grewal's lawyer sent a second letter in the same vein a week later. After receiving the second letter, the Credit Union responded, saying that Ms. Grewal had acted in a manner that was incompatible with continued employment. Ms. Grewal did not return to work and brought an action for wrongful dismissal.

The trial judge held that the Credit Union had just cause to terminate Ms. Grewal's employment on the grounds of the inflammatory letter sent by Ms. Grewal's lawyer. The critical facts leading to this decision were:

- The language of the letter was disrespectful and inflammatory;
- The accusations were serious and covered most aspects of the working relationship;
- The letter demanded that Ms. Grewal's superior acknowledge that he had acted in bad faith, with the intent of injuring Ms. Grewal and her reputation;
- Ms. Grewal's superior had to apologize for his conduct on terms acceptable to Ms. Grewal, and had to refrain from future criticism of her performance;
- The letter was not substantiated by the facts (i.e. it alleged serious unwarranted invasions of privacy which were not proven); and,
- The letter was sent to Ms. Grewal's superior, the Board of Directors and the Credit Union regulator.

In the result, the letter permanently undermined the employment relationship and made it im-

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possible for the parties to continue working together. The British Columbia Court of Appeal upheld the findings of the trial judge and dismissed the appeal.

Similarly, in Bennett v. Cunningham, 2012 ONCA 540, the relationship between a junior associate lawyer and her boss broke down quickly. Shortly after being hired, Ms. Bennett was concerned that the office lacked the technological tools for her to do her job. Her employer, Ms. Cunningham, addressed the concern by investing in voicemail and practice management software and also implemented some of Ms. Bennett's file management suggestions. Ms. Bennett then became concerned about the entry of her time dockets and collection of her accounts. Specifically, she discovered that some of her time had not been entered and some of her time had been improperly credited to Ms. Cunningham. These concerns were acknowledged by Ms. Cunningham, who advised that the errors would be corrected upon receipt of copies of accounts where the errors had occurred. A few weeks later, Ms. Bennett gave Ms. Cunningham a four page letter which set out nine areas of concern. It was extremely critical of Ms. Cunningham's systems for file management and docketing, among other items. The letter stated, in part, "as my income depends solely on my billable hours docketed and collected, the monetary gain to you is both dishonest and negligent". Ms. Cunningham subsequently terminated Ms. Bennett's employment. Ms. Bennett brought an action for wrongful dismissal and unpaid commissions.

The trial judge held that Ms. Cunningham had just cause to terminate Ms. Bennett's employment on the grounds of her complaint letter. The judge stated that the relationship between lawyers practicing in the same law office is based on confidence, respect and trust. The letter was highly critical of the operation of the law office and of Ms. Cunningham's integrity. The accusations destroyed the employment relationship. On appeal, the Divisional Court reached a different conclusion. But the Ontario Court of Appeal allowed the appeal and restored the findings of the trial judge.

These two cases suggest that employers and employees must be mindful that aggressive intervention through legal counsel or on their own, may have a significant impact on the ability to continue with the employment relationship. Complaint letters that contain incendiary, harsh or accusatory language, particularly if the allegations cannot be supported, are problematic. Moreover, letters that accuse employers of dishonesty, negligence or other forms of inappropriate conduct that are unsupported may result in just cause for termination of employment. Employers should have complaint letters they receive reviewed by counsel before taking any drastic action. The flip-flopping of the courts in the Bennett v. Cunningham decision in particular illustrates the difficulty in determining whether such letters fundamentally destroy the employment relationship. Each case will turn on its particular facts.

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