



# What's New in HR Law

## Acts of Misconduct and Poor Judgement Cumulatively Amount to Just Cause

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### Bottom Line

In a recent decision, the Ontario Superior Court (“ONSC”) upheld the “for cause” termination of a fiduciary employee with no prior disciplinary record and 17 years of service who engaged in a series of individual acts of misconduct, poor judgment, and dishonesty. The Court found that the individual acts were not enough to justify a summary dismissal in and of themselves. However, when considered together, the series of events was deemed sufficient not only to warrant a just cause termination at common law, but also enough to meet the higher standard for termination without notice under the *Employment Standards Act, 2000* (“ESA”).

### Background

Sybil Goruk was the executive director of the Barrie Chamber of Commerce (the “Chamber”), a not-for-profit organization. Ms. Goruk maintained the most senior staff position and was responsible for day-to-day operations of the Chamber, including managing the budget within the parameters of the volunteer board of directors (the “Board”). The Board had limited ability to oversee Ms. Goruk’s activities and therefore relied on her honesty and integrity in fulfilling her role.

In February 2014, Ms. Goruk was placed on a paid administrative leave pending investigation after the discovery of numerous financial irregularities. She was subsequently terminated for cause in

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April 2014. Prior to the investigation, Ms. Goruk's employment record was spotless. There were no warnings or progressive discipline issued in relation to the acts that ultimately led to her termination.

Ms. Goruk brought an action against the Chamber for wrongful termination and aggravated and punitive damages.

At trial, the Chamber focused on the following six incidents of improper conduct, which it asserted formed the basis for Ms. Goruk's summary dismissal:

1. Uttering a forged document to the Chamber's bank;
2. Taking vacation pay out in cash without authorization;
3. Granting herself an unauthorized pay raise;
4. Awarding contracts to her sons' businesses without following the Chamber's established protocol and without disclosing those transactions to the Chamber's auditor;
5. Suppressing a letter from the Chamber's auditor which expressed a number of concerns regarding their financial statements; and
6. Reimbursing herself for charges on her personal American Express credit card without supplying proper supporting documentation.

In addition to these issues, the Chamber also identified that Ms. Goruk had impeded the new Treasurer's access to financial information, and had allowed a controversial e-broadcast to be circulated that challenged a proposal of the Board.

## **The Decision**

In determining whether there was just cause for termination, the Court considered each of the allegations raised by the Chamber in isolation prior to considering them as a whole within the context of other issues raised by the Chamber.

The Court ultimately found that none of Ms. Goruk's individual acts of misconduct or poor judgment were sufficient to support a termination for cause on their own. However, when taken together and considered cumulatively, they did.

Despite Ms. Goruk's otherwise unblemished 17-year service record, and the evidence that was provided by former past presidents that she was an exemplary, dedicated and hard-working employee, the Court further found that these acts, taken cumulatively, were also enough to justify bypassing any progressive discipline steps and issuing an immediate termination for just cause. Chief in this decision was the fact that all of the issues raised came to a head at or around the same time period.

The Court also determined that Ms. Goruk was in a fiduciary relationship with her employer and, as such, owed the Chamber the duties of loyalty, good faith, and avoidance of conflicts of interest. These duties were of particular significance to Mr. Goruk's role given that the Chamber was a not-for-profit organization that served the community. Ultimately, the Court found that Ms. Goruk's combination of misconduct and bad judgment created a situation where the Board could no longer trust her. The Court recognized that this was untenable, given that the Board relied on the Executive Director to act autonomously and without any direct supervision.

Ms. Goruk's claim was dismissed in its entirety.

## Check the Box

This decision is significant for employers who are considering whether an employee's conduct amounts to just cause for termination, especially if the employee is a fiduciary or occupies a position of trust. Key takeaways from this case include:

1. Multiple incidents of misconduct and/or bad judgment that would otherwise be seen as "not major" may, when considered together, amount to just cause.
2. The repeated failure of a fiduciary employee (or an employee who occupies a position of trust) to act with honesty, good faith, and trust may amount to just cause, even if the individual acts or incidents are not particularly serious.
3. Progressive discipline that involves explicit warnings and the opportunity for correction is generally advisable, particularly for long-standing employees with clean disciplinary records. However, this case demonstrates that multiple incidents of misconduct, particularly those occurring at or around the same time, may be construed as a repudiation of the employment contract, making it unnecessary to first resort to a progressive scale of discipline before proceeding to termination.

This decision is welcome news for employers and helpfully demonstrates that the legal concept of summary dismissal is indeed alive and well. However, the threshold for establishing just cause at common law and under the ESA remains high. Employers are well advised to seek the support and guidance of experienced employment counsel before effecting a just cause termination.

## Need more information?

For advice regarding misconduct-based terminations, or for representation in wrongful dismissal litigation, contact [Hayley Smith](#) at 416-206-2460, or your regular lawyer at the firm.



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ADVOCATES  
for EMPLOYERS  
of CANADA



### Toronto

Bay Adelaide Centre  
333 Bay Street, Suite 2500,  
PO Box 44  
Toronto, Ontario M5H 2R2  
tel: 416.408.3221  
fax: 416.408.4814  
toronto@filion.on.ca

### London

620A Richmond Street, 2<sup>nd</sup> Floor  
London, Ontario N6A 5J9  
tel: 519.433.7270  
fax: 519.433.4453  
london@filion.on.ca

### Hamilton

1 King Street West, Suite 1201  
Box 57030  
Hamilton, Ontario L8P 4W9  
tel: 905.526.8904  
fax: 905.577.0805  
hamilton@filion.on.ca