

When Stuff Really Hits the Workplace Fan

*Firing for Just Cause, Serious
Complaints & Ministry Investigations*

EP 56

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Meet Your Presenters

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Land Acknowledgement

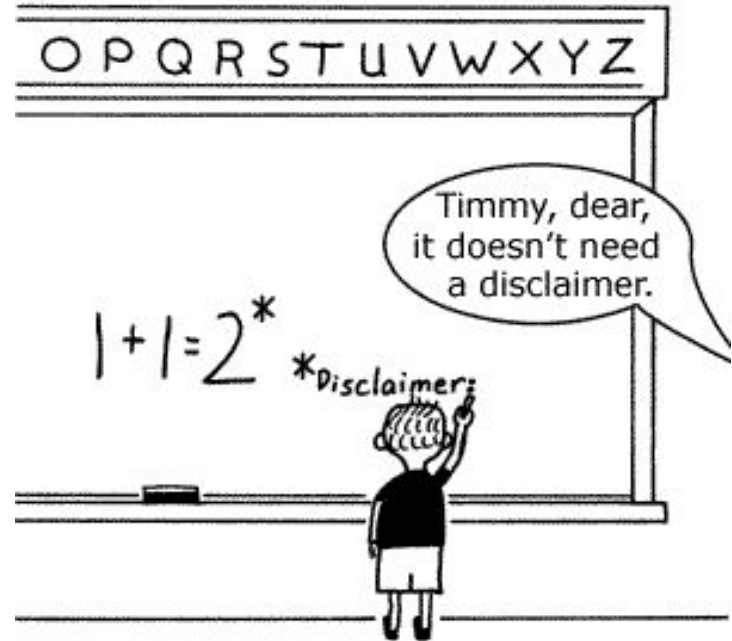
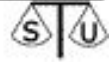
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We are grateful to live and work on this land.

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Timmy
doesn't need
a disclaimer
but we do...



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Presentation Roadmap

When Stuff Really Hits the Workplace Fan: Serious Injuries, Ministry Investigations & Just Cause

- When is it Ever Just Cause?
- Ministry Investigations
- OHSIA Investigations, Compliance Orders & Charges

When is it Ever Just Cause?



Understanding "Just Cause"

- **Definition:** "Just Cause" refers to an employer's right to terminate an employee without notice or pay in lieu of notice when the employee's misconduct is so serious that the employment relationship is irreparably broken.
- **Three Sources of Just Cause Standard:**
 - **Statutory:** I.e. Under Ontario ESA, employee must have committed "wilful misconduct" disobedience, or neglect of duty that is not trivial and not condoned by the employer. This is the highest standard generally.
 - **Common Law:** arises from judicial decisions, requiring a high threshold of misconduct that undermines the employment relationship.
 - **Contractual:** defined by the terms of an employment contract

Understanding "Just Cause"

- **Legal Standard:** Courts in Canada apply a very high standard for Just Cause. Misconduct must be severe enough to justify termination without any compensation.
- **Key Considerations:**
 - Nature and severity of the misconduct
 - Impact on workplace dynamics or company reputation
 - Past disciplinary measures and progressive discipline
 - Level of honesty and integrity in any investigation process

Examples of Misconduct That May Constitute Just Cause

- **Serious Misconduct:** Theft, fraud, assault, or significant dishonesty
- **Insubordination:** Willful and persistent refusal to follow reasonable instructions
- **Workplace Harassment or Violence:** Harassment that creates a toxic environment or breaches a workplace harassment policy
- **Chronic Poor Performance:** Only if well-documented and previous attempts at correction have failed
- **Conflict of Interest:** If it harms the employer's business interests

Note: The employer must show it took proportional steps (like progressive discipline) before resorting to termination.

Caselaw Examples of Just Cause

Park v. Costco Wholesale Canada Ltd. (2023 ONSC 1013)

Facts: Mr. Park, a 20-year employee of Costco, was fired after intentionally deleting an internal company website he had created for Costco's toy department. Despite his managerial responsibilities and the company's ethics policy emphasizing integrity, Park deleted the site twice in anger, including after being explicitly told not to. The court emphasized that his deliberate and repeated acts, insubordinate emails, and attempts to mislead his employer justified his dismissal for just cause. This case reinforced that wilful destruction of company property and insubordination can terminate the employment relationship without notice or pay

Caselaw Examples of Just Cause

CRA Employee Terminations for CERB Fraud (2023)

Facts: The Canada Revenue Agency (CRA) terminated 120 employees for claiming the Canada Emergency Response Benefit (CERB) while employed, essentially committing fraud. The misconduct directly breached the trust inherent in their positions. Though not all cases were litigated in court, this large-scale termination has been cited as an example of how serious dishonesty undermines employment relationships, meeting the threshold for just cause

Caselaw Examples of Just Cause

Render v. ThyssenKrupp Elevator (Canada) Limited (2022 ONCA 310)

Facts: Render, a long-term employee, was fired for touching a co-worker's buttocks during what he described as a joke. The Ontario Court of Appeal ruled this act of sexual harassment, even if isolated, was serious enough to destroy the employment relationship. The court held that the conduct, compounded by Render's lack of remorse and awareness of its inappropriateness, supported a finding of just cause. However, the court found that his conduct did not meet the standard of "wilful misconduct" under the Ontario ESA.

Key Risks and Employer Best Practices

- **Risk of Litigation:** Successful wrongful dismissal claims are common if Just Cause is not proven.
- **Best Practices for Employers:**
 1. **Document Everything:** Keep thorough records of misconduct, warnings, and performance reviews.
 2. **Progressive Discipline:** Apply corrective steps consistently (e.g., verbal warning, written warning, suspension).
 3. **Performance vs Discipline:** Just Cause terminations for performance issues require a completely different (higher) standard and need to be approached with additional caution.
 4. **Fair Investigations:** Conduct a proper investigation before termination.
 5. **Legal Consultation:** Consult legal counsel before terminating for Just Cause to assess risk.
- **Remember:** Courts favor employees in most disputes, so a strong case is crucial.

Ministry Investigations



Investigation

Investigations into ROEs (Records of Employment)

- **Triggers:** Employee complaints or flagged issues affecting Employment Insurance claims (e.g., incorrect separation codes or delayed submissions).
- **Key Employer Obligations:** ROEs must be submitted to Service Canada within 5 days of an earnings interruption or the next payroll cycle, accurately reflecting insurable hours and earnings.
- **Consequences:** Non-compliance can lead to demands for corrected ROEs, penalties, or even prosecution if false information affects EI benefits
- **Practical Tip:** Use automated payroll systems to generate accurate ROEs promptly, minimizing the risk of mistakes and missed deadlines

ESA Breach Investigations

- **What Triggers an Investigation?:** Reports of unpaid wages, vacation pay, or termination issues. High-risk industries may also face random audits.
- **Inspection Powers:** Officers can review payroll records, interview staff, and order back pay or compliance actions. Penalties for serious violations include significant fines or legal action.
- **Employer Tip:** Keep thorough records and ensure policies meet ESA standards to avoid penalties
- **Practical Tip:** Conduct regular internal audits of your payroll and employee records to ensure compliance with ESA standards, and train managers on key ESA requirements

OHSA Breach Investigations

- **Common Triggers:** Workplace accidents, safety complaints, or routine inspections in high-risk sectors.
- **Inspector Authority:** Enter workplaces without notice, inspect equipment, and enforce compliance with safety regulations. They can issue stop work orders or fines.
- **Potential Penalties:** Serious breaches may result in fines of up to \$2 million for corporations, and even jail time for directors and/or individuals in severe cases. Proactive safety measures are key.
- **Practical Tip:** Hold regular safety meetings, update training for all employees, and document compliance efforts to show inspectors due diligence in safety management.

OHSA Investigations, Compliance Orders & Charges



OHSA Compliance in Ontario – Brief Overview

- **Overview of the *Occupational Health and Safety Act (OHSA)*:**
 - Ontario's main legislation for workplace health and safety.
 - Applies to most employers and employees, establishing minimum safety standards.
- **Employer Responsibilities:**
 - **General Duty:** Take every reasonable precaution for worker safety.
 - **Training and Supervision:** Ensure workers are trained and supervised.
 - **Safety Policies/Health and Safety Committees:** Mandatory health and safety policies for workplaces with 6+ employees. Also, various joint health and safety committee requirements for companies of different sizes.
- **Worker Rights:**
 - **Right to Know** about workplace hazards.
 - **Right to Participate** in health and safety processes.
 - **Right to Refuse** unsafe work if danger is perceived.

MOL Inspections and Investigations

- **Role of the Ministry of Labour (MOL):**
 - MOL inspectors can enter workplaces without notice to investigate hazards or check compliance.
 - Investigations may result from worker complaints, accidents, or routine inspections.
 - Any serious injury of a worker almost always results in a MOL inspection.
- **Types of Compliance Orders:**
 - **Stop Work Order:** Requires immediate halt to specific work until the hazard is resolved.
 - **Compliance Order:** Sets a deadline for correcting an identified issue.
 - **Requirement Order:** Requests specific documents or information for further inspection.

Compliance Orders and Employer Obligations

- **Responding to Compliance Orders:**
 - Employers must meet the deadlines in orders or face further enforcement.
 - Proactive compliance with orders can prevent escalation.
- **Impact of Non-Compliance:**
 - Failure to comply with MOL orders can lead to fines and further legal action.
 - Non-compliance at this stage can result in stiffer penalties under the *Provincial Offences Act*.
- **Practical Advice:**
 - Sometimes challenging the investigations/orders themselves is a strategy. This can mitigate how much of a case the MOL investigator mounts against the employer for subsequent “charges” under the OHSA.
 - This tactics must be approached carefully.

Regulatory Offences under OHSA

- **Definition of Offences:**
 - Violations of OHSA, its regulations, or MOL orders are regulatory offences.
 - **Examples:** Failing to protect workers, obstructing inspections, ignoring compliance orders.
 - **Most Common:** An injured worker is found to be injured by lack of appropriate care of the employer/supervisor/contractor/owner/director
- **Penalties for Corporations and Individuals:**
 - **Corporations:** Fines up to \$2 million per offence.
 - **Directors and Officers:** Fines up to \$1.5 million and/or 12 months imprisonment per offence.
 - **Supervisors and Other Individuals:** Fines up to \$500,000 and/or up to 12 months imprisonment.

Defence Strategies for Employers

- **Due Diligence Defence:**
 - Employers can defend charges by proving they took all reasonable precautions to prevent the offence.
 - **Limitations:** Successful substantive defences are rare; procedural strategies are often more effective.
- **Procedural Strategies:**
 - Addressing issues early at the investigation or compliance order stage can help avoid charges. Again, this must be done carefully.
 - Clear documentation and proactive measures can support a due diligence defence if needed.
 - **Most often:** Finding procedural deficiencies in the Crown's argument and/or mitigating the fine as much as possible through various methods.

Practical Tips for OHSA Compliance

- **Proactive Compliance Measures:**

- Regular training and refreshers on health and safety policies.
- Frequent internal audits and hazard assessments to identify risks early.
- **Practical Point:** As for the OHSA, policies are only as good as their implementation!

- **Preparing for Investigations:**

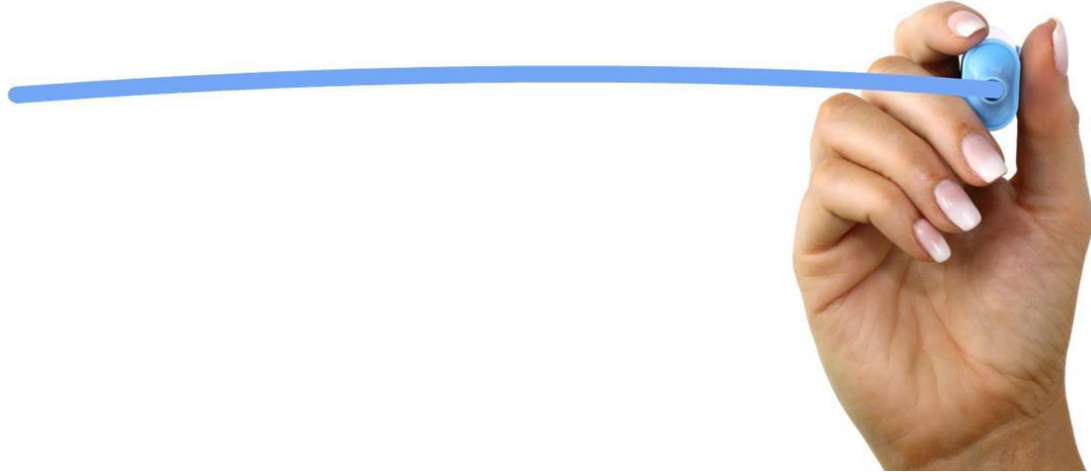
- Keep thorough records of safety measures, training, and equipment maintenance.
- Engage with MOL inspectors professionally and address concerns promptly
- Hire counsel to help you only disclose what is necessary, as the investigation process is designed to prove guilt in preparation for charges later on.
- **Notably:** any serious injury of an employee almost always leads to charges under the OHSA, with the compliance investigation merely being a tool to mount the case against the employer.

OHSA charges are mirrored in many other statutes, such as – anything subject to the *Provincial Offences Act*:

1. **Highway Traffic Act** – Covers traffic-related offences like speeding, distracted driving, and improper lane usage.
2. **Technical Safety and Standards Act** – provides a regulatory framework to ensure the safe installation, operation, and maintenance of technical systems and equipment, protecting public health, safety, and the environment.
3. **Environmental Protection Act** – Includes pollution control, waste management, and other environmental regulations.
4. **Building Code Act** – Governs construction standards and permits, including building safety compliance.
5. **Smoke-Free Ontario Act** – Prohibits smoking in certain areas to protect public health.
6. **Dog Owners' Liability Act** – Imposes restrictions on the care and control of dogs to prevent injuries or nuisances.
7. **Trespass to Property Act** – Regulates entry onto private properties without permission.
8. **Liquor Licence and Control Act** – Controls the sale and service of alcohol, including licenses and conditions for alcohol-related businesses.
9. **Cannabis Control Act** – Regulates cannabis possession, consumption, and sale to align with public health and safety.
10. **Municipal Bylaws** – Local governments enforce bylaws on noise, zoning, property standards, and more.

Defences and procedural strategies are very similar when charged under any of these Acts, subject to the nuance of each are of law.

QUESTIONS



Thank you!

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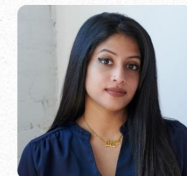
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