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## Non Cause Termination May Require Full Investigation of Conduct

### MINKEN

EMPLOYMENT LAWYERS

In *Brownson v. Honda Canada Mfg.*, the Ontario Superior Court dismissed a Summary Judgment Motion brought by Honda based on the employee's theory that he was fired for cause with no opportunity to dispute the termination and that there was no finding as to who was responsible for the incident of misconduct that generated the investigation by Honda. Honda terminated the employee as a result of misconduct but did not allege cause to terminate and offered termination pay in lieu of notice on the basis of there being no cause to terminate.

The Court held that, 'If this termination had come out of the blue I might be persuaded. However, in the present case, the juxtaposition of the termination with a contemporaneous investigation of misconduct colours the ordinary procedures, such as escorting the terminated individual out of the workplace, with an innuendo that could give rise to the mental suffering alleged by the Plaintiff particular to the circumstances of the termination rather than the fact of being terminated.'

Even though Honda did not allege cause the Court found that, 'In the circumstances of the present case it is a triable issue whether the employer adopted the procedure intentionally to side step the criteria for fair treatment of an employee against whom

cause is alleged.'

It appears that if Honda terminated the employee to simply avoid treating him fairly Honda may be liable for mental suffering as a result of the 'distress at the stigma of accusation, followed by termination for all to see and speculate.'

Odd as this decision may at first seem, this result is likely because the 'medical/psychological' evidence put before the Court by the employee required evidence of misconduct or lack thereof to determine the employee's claim for 'intentional infliction for mental suffering'.

### Impact of Decision on Employers

Employers should ensure that if misconduct comes to light that they not respond by merely terminating an employee on a without cause basis. A proper investigation should be conducted, with details provided in the termination letter of the reason for termination, reserving the right to rely on cause in the event the employee does not accept the termination package offered.

This strategy will ensure either a quick resolution for the termination package offered or the ability of the employer to rely on cause to terminate thereby placing the employer in a better

strategic position to resolve matters with the employee. Employers should seek guidance by experienced Employment Law Counsel to minimize any chance of a dispute by employees to avoid costly legal proceedings.

### Impact of Decision on Employees

Employees should be aware that Employers are required to abide by principles of natural justice and that failure to do so may be leveraged in their favour. Employers are also highly scrutinized and while certain conduct may be excused by an employee an employer may not be excused of such conduct. Employees should consult with experienced Employment Law counsel to review the circumstances surrounding the termination which includes a thorough review of the investigation process and termination letter.

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