

Emerging Trends in
Employment &
Labour Law



"Just Cause"
The Holy Grail or
Leprechaun Gold?



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- Case law
- Establishing Just Cause
- Recommendations for procedure
- Key proactive tools
- Severance/Notice Clauses

Overview




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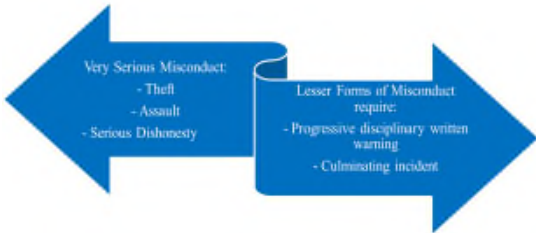
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Crazy but True Cases

- 2014 BC Case
 - Misrepresentation on resume
 - Lied about deletion of emails
 - Salesperson with no sales
 - Not just cause
- Municipality West Coast Trail dishonesty case – not just cause
- SCC states dishonesty not automatically just cause

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Two Paths to Just Cause



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Six Components of Effective Discipline



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How many warning letters to establish just cause?

```
graph TD; A[Varies with:] --- B[Seriousness]; A --- C[Time between warnings]; A --- D[Length of Service]
```

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Recommended Game Plan:

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graph LR; A[Establish and implement progressive disciplinary system] --> B[Accept that most terminations will be without cause]; B --> C[Control severance cost with letter of hire or contract]
```

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Recommended Game Plan:


```
graph TD; A[Do not delay inevitable terminations. There are many downsides to delay:] --- B[No guarantee to case building]; A --- C[Risk of sick leave]; A --- D[Bad apple spoiling the bunch]
```

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Just Cause? – Who Cares

Key Proactive tools:


- 1. Probationary Periods
- 2. Severance clauses

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Probationary Period

Typical problems:


Debatable effect if longer than 90 days
Must clearly define employer's rights during the probationary period
Working past the end of the probationary period

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Severance/Notice Clauses

Typical Problems:

- No notice clause so left exposed to increasing severance packages awarded by the Courts
- Notice clause not binding
- Agreed after offer of employment
- Unclear
- Contrary to Labour Standards
- Lack of independent legal advice for Employee

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QUESTIONS?

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