

## Publisher's Note

2018 – Release 1

Previous release was 2017 – Release 2

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Rudner

# You're Fired! Just Cause for Dismissal in Canada

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This release features updates to the case law and commentary in Chapters 5 (Dishonesty), 14 (Harassment), 16 (Intoxication/Alcohol and Drug Use), 17 (From Cyber-Slacking to Cyber-Stalking: Abuse of Technology and Social Media), 21 (After-Acquired Cause (After the Fact Evidence)), 24 (Probationary Employees), 26 (Investigations), 27 (Human Rights Considerations); and 29 (Damages in Wrongful Dismissal Claims).

This release features updates to the “New Developments” section with digests pertaining to just cause dismissals from September 2017 to February 2018 as well as extensive updates to the “Case Summaries” section.

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## **Case Highlights:**

**Employment law — Termination and dismissal — Termination of employment by employer — What constituting just cause — Misconduct — Insubordination** — Employee worked for employer as registry supervisor — Forgery investigation was conducted, and employee was told by director not to disclose details to office staff or to her supervisor — Based on emails sent by employee's supervisor, employer terminated employee's employment — Employee claimed that employer dismissed her without cause and failed to provide reasonable notice or pay in lieu of notice — Employer claimed that employee was dismissed for cause after she disclosed to office staff details of forgery investigation, contrary to director's instructions — Employee brought action seeking damages for wrongful dismissal — Action allowed — Employee was not given opportunity to respond to allegations contained in supervisor's emails — Employee's evidence was accepted that she did not disclose details of investigation to staff in violation of director's instructions — Employer failed to establish, on balance of probabilities, that it dismissed employee for cause: *Garnett v. Alberta Motor Association*, (October 31, 2017, G.R. DeBow Prov. J., Alberta Provincial Court), 285 A.C.W.S. (3d) 91.

**Investigations — The Importance of an Investigation — Failure to Investigate Sexual Harassment may not be Fatal** — Despite an employer's failure to investigate sexual and verbal harassment allegations prior to the employee's dismissal, the Alberta Court of the Queen's Bench upheld the employee's dismissal for cause. The court held that the Plaintiff's conduct warranted summary termination because his behaviour towards the co-worker constituted verbal and sexual harassment at a level that was incompatible with continued employment. Although the Defendant did not conduct an adequate investigation, had it done so, the result would have been no different. Admissions made by the Plaintiff or allegations otherwise proven during the trial were sufficient to justify termination: *Watkins v. Willow Park Golf Course Ltd.*, 2017 CarswellAlta 1678, 2017 ABQB 541.