



e2r Alert!

Is Secretly Recording Conversations at Work Cause for Termination? A Recent Decision Out of BC Provides a Fresh Outlook

A recent decision by the British Columbia Supreme Court sheds new light on an employer's ability to terminate an employee for just cause for secretly recording conversations in the workplace.

Facts

Mr. Shalagin was terminated by Mercer Celgar Limited Partnership on a without cause basis in March 2020. Following his termination, he brought forth complaints regarding employment standards, human rights and wrongful dismissal. During litigation relating to the human right complaint, Mr. Shalagin disclosed that he secretly recorded over 130 meetings at work. When asked why he made the recordings, Mr. Shalagin said he made them to help him better learn English and that he was keeping them as proof of the alleged discrimination.

As a result of this information obtained post-termination, Mercer Celgar Limited Partnership changed its position and asserted cause as the basis for the termination of Mr. Shalagin's employment.

The court decision centered around whether the employer had just cause to terminate his employment. Did the action of secretly recording copious meetings break the trust between employee and employer and justify "after acquired cause"?

Takeaways

The court supported the position of "after acquired cause" based on the employer's discovery of the recordings post termination. While the court provided a variety of reasons as to why the termination for just cause was upheld, a notable takeaway is that it was determined that the secretive recordings by the employee over a lengthy period of time was enough to significantly damage the trust in the employment relationship.

While not fundamental to this case, we note that it is not a criminal offense in Canada to record a conversation so long as one party to the conversation consents. In this case, Mr. Shalagin was the one to provide consent.

[e2r™](#)

This document is intended to be used as a reference and ought not be considered as constituting legal advice (including jurisdictional variances) and accordingly should not be relied upon without obtaining specific legal advice from e2r™.

Not all instances of recordings in the workplace will give justification for a termination for just cause. As always, if you have any questions regarding a specific situation, please do not hesitate to reach out to speak with an e2r® Advisor.