

WHAT'S NEW AT RUBIN THOMLINSON LLP

- ◆ Daniel A. Lublin joined our firm on October 11, 2005, as a new associate
- ◆ Join us the morning of January 31, 2006, for a discussion of the most important employment law cases of 2005 – stay tuned for invitations!
- ◆ Janice Rubin was featured on Report on Business Television's "Squeeze Play" segment on October 20, 2005, where she discussed non-competition agreements and restrictive covenants
- ◆ Christine M. Thomlinson spoke on the "Law of Mitigation" at the HRPAA's 12th Annual HR Law Conference on October 25, 2005

We work with our clients to provide optimal legal solutions to their challenging workplace issues. If you would like to know more about our practice, please do not hesitate to contact us at (416) 847-1814 or via e-mail at contact@rt-law.ca

(October, 2005)

Employees Found Guilty of Just Cause:

What Happens When you Don't Do What You're Told!

An Ontario Court of Appeal decision released last week held that the Toronto Humane Society ("THS") had just cause to terminate the employment of two managerial shelter employees when they refused to follow a direct order to accept all strays brought to the shelter. THS staff had been told to refrain from accepting strays within the City of Toronto for a period of time following amalgamation of the municipalities. When this decision was reversed and THS staff told to renew acceptance of all strays, Diane Roden and Karen Mottram continued to be concerned about the legalities of this decision and refused to comply with it. Despite numerous attempts on the part of THS management, including disclosure of legal opinions THS had received, Ms. Roden and Ms. Mottram could not be convinced. Their employment was concluded when they made clear they would not follow the order to accept strays. They sued THS for wrongful dismissal, seeking pay in lieu of notice.

The trial judge was persuaded by THS that there existed just cause for the employees' termination because of their refusal to follow the reasonable order, and the Court of Appeal agreed. The Court held that, when the employees refused to agree to do as they had been asked, this amounted to a repudiation of their employment contract, and THS was entitled to let them go without payment of severance.

What does this mean for employers?

- When THS fired the employees, just cause was not mentioned and there was no reference to cause in the termination letter. In fact, the employees were nonetheless paid out amounts they were due under minimum employment standards legislation. The employees tried to argue that, because of this, THS was precluded from defending the action on the basis of just cause. The Court of Appeal disagreed and said that, if just cause is a live issue, then an employer is entitled to defend a lawsuit on this basis, regardless of whether cause was asserted at the time of termination.

Employees Found Guilty of Just Cause:

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What Does this Mean for Employers (continued)?

- For behaviour like this to amount to "cause," the employee's conduct and the character it reveals "must be such as to undermine, or seriously impair, the essential trust and confidence the employer is entitled to place in the employee in the circumstances of their particular relationship." In other words, if the employee's actions are not serious, are engaged in the heat of the moment, or are as a result of provocation, this is unlikely to be seen as repudiation.
- Employers should note that repudiation will not be found if the employee has a reasonable excuse for his or her actions. Employers are therefore wise to take the time to understand the basis for the employee's conduct or refusal and to try to take steps to address the employee's concern(s), just as THS did in this case. Employers will be much better able to defend an ultimate decision to terminate in such a case.

This alert is prepared as a service for our clients and other persons dealing with employment issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered. No part of this publication may be reproduced without prior written permission of Rubin Thomlinson LLP. This has been sent to you courtesy of Rubin Thomlinson LLP.

DID YOU KNOW?

- Although some employers give their employees a holiday on Easter Sunday, Easter Monday, the first Monday in August, or Remembrance Day, these days are not public holidays under the Employment Standards Act, 2000 ("ESA")
- The ESA does recognize the following eight public holidays:
 - New Year's Day
 - Good Friday
 - Victoria Day
 - Canada Day
 - Labour Day
 - Thanksgiving Day
 - Christmas Day
 - Boxing Day (December 26)