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Grounds for Dismissal: Employees Can't Just Deny Insubordination

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Employee insubordination is generally recognized as a cause for dismissal when an employee refuses to submit to the lawful instructions of an employer in performing a task or job. Even a single act of insubordination will justify termination if the refusal is found to be so serious that it affects the fundamental nature of the employment relationship. But what about a situation where the employee's insubordination takes the form of refusing to formally acknowledge a mistake made? This issue was central to the determination of *McGachie v. Victoria Immigrant & Refugee Centre Society* [2007] B.C.J. No. 180 (S.C.).

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In *McGachie*, the plaintiff had been employed as an employment counsellor by the Victoria Immigrant and Refugee Centre Society for five years. During the course of her employment she had been warned, on several occasions, that her job performance was unsatisfactory. Her supervisor had recommended more than once that she be terminated for incompetence. When the plaintiff made two errors regarding one file, she was given a written warning stating that "any more serious mistakes like this will certainly lead to the termination of your employment in the future." Following a subsequent error she was warned in writing that "this e-mail will be kept on your personnel file for the appraisal."

Several months later, the plaintiff made another mistake at work. Even though the employer's policy was that certain documents sent to Human Resources and Social Development Canada (HRSDC) be approved first by the plaintiff's supervisor; the plaintiff, with full knowledge of the policy, sent the documents to HRSDC without obtaining the supervisor's prior approval.

Following this latest mistake, the plaintiff was asked to meet with her supervisor to discuss what she had done. At that time, the employer asked the plaintiff to acknowledge her mistake in writing. The plaintiff failed to do so but instead indicated that she would, in the words of the Court, "pursue her own approach to serving clients."

At trial, the Court found that the plaintiff's mistake, with respect to sending documents to HRSDC was not inconsequential; however, it was not so serious as to warrant summary dismissal. Neither could it be construed as the culminating event in a series of earlier mistakes for which she had received warning.

The Court did find, however, that the mistake was serious enough to warrant discipline in the form of requiring the plaintiff to acknowledge her mistake in writing. The Court further held that in light of the plaintiff's previous infractions, the discipline imposed was reasonable and that the refusal to comply with the direction to acknowledge her mistake in writing constituted insubordination, which justified dismissal for cause. The Court noted that the plaintiff's response to the employer's direction was "an indication [that the plaintiff] did not feel bound to follow directions from her superiors."

While *McGachie* does not create any new law regarding the effect of insubordination on the employment relationship, it does serve to illustrate that insubordination justifying dismissal for cause is not limited to the refusal to perform one's job duties. In *McGachie*, the Court found that the plaintiff's refusal to acknowledge her mistake in writing, together with her indication that she would continue to approach her job duties as she saw fit, constituted a repudiation of the employment agreement which justified her summary dismissal.

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