



### **A MANAGER'S OFFENSIVE LETTER TO A CEO WAS CAUSE FOR DISMISSAL**

The British Columbia Court of Appeal dismissed a credit union branch manager's appeal of a lower court ruling that she was dismissed for just cause after she had her lawyer send a letter to the CEO, accusing him of bad faith conduct toward her, threatening legal action, and demanding an apology. Finding no fault with the determination that the manager's letter permanently undermined the employment relationship and was cause for dismissal, the Court of Appeal held that the trial judge was entitled to reach the conclusions he did on the evidence that was presented to him.

Sukhwinder Grewal was fired after she wrote a letter to her CEO, demanding an apology and threatening legal action as a result of allegations of irregularities that he had made against her.

Employed by the Khalsa Credit Union since late 1989, Grewal rose through the ranks and became manager of the Vancouver branch in 1999. In May 2000, however, as a result of a review by an outside consultant, finding that Grewal had breached the credit union's policies and procedures at the Vancouver branch, she was demoted to managing the smaller branch in Abbotsford, B.C. and advised in writing that any future breaches would result in serious disciplinary measures including termination for cause. By late 2001, Grewal was reassigned to managing the credit union's largest branch in Surrey but was transferred back to Abbotsford in October 2003.

Grewal's CEO, Sohi, wrote to her on a number of occasions criticizing various aspects of her work. Grewal considered these criticisms to be unwarranted and defended her actions in replies to Sohi that he considered insubordinate and disrespectful, including a detailed letter drafted by her lawyer dated March 11, 2005.

In June 2005, Sohi became aware of some irregularities with regard to the renewal of Grewal's mortgage, which had originally been processed through the Vancouver branch when she was its manager. Believing that Grewal had received a personal benefit by obtaining a below-market mortgage rate, Sohi prepared a memo to the credit union's conduct review committee entitled "Re Mortgage Rate Scandal and Irregularities/Exceptions by Abbotsford Branch Manager," outlining the irregularities with the mortgage and stating that legal counsel had been retained concerning Grewal's "conduct, several incidents of insubordinate behaviour, mortgage rate scandal, irregularities and exceptions ... since the warning of June 2000."



Following discussion of this memo by the committee and the board of directors, Sohi received legal advice in late September 2005 that he should obtain more information about the mortgage renewal from Grewal before proceeding with any disciplinary measures. He sought to arrange an interview with her for this purpose, but before he could meet with her she went on disability leave from early October 2005 until late August 2006. During her absence, Sohi sent Grewal several e-mails and letters advising her that there were outstanding issues regarding her mortgage and giving her a choice between arranging a meeting, responding to questions in writing, or deferring the matter until her return to work, but he received no reply.

When Grewal returned to her branch in Abbotsford on August 29, 2006, she was advised that she was to report to the head office in Surrey. Upon learning from Sohi that he wanted to meet with her to discuss the mortgage issue, Grewal asked for time to prepare and review the relevant documentation. She met with Sohi and two other credit union executives on August 31 and was questioned at length about the mortgage issue. Following the meeting, Grewal understood that she would be contacted regarding where she should report to work. However, Sohi claimed that he expected her to return to work at the Abbotsford branch the following day and was surprised when she did not do so.

On September 1, 2006, Grewal had her lawyer send a letter to Sohi, copied to the board of directors and to the B.C. Deputy Superintendent of Credit Unions and Trusts, demanding a written apology from Sohi within 21 days and an acknowledgment that he had acted in bad faith in making a false accusation regarding her mortgage to the board of directors as well as in repeatedly making "baseless allegations" of performance failures in her job as a manager. The letter further demanded that Sohi promise to refrain from such conduct in the future and that the apology be copied to the board of directors of the credit union and the Deputy Superintendent of Credit Unions and Trusts. The letter threatened legal action against Sohi and the credit union if an apology was not forthcoming.

Receiving no reply, Grewal's lawyer wrote again to Sohi on September 6, 2006, asking whether her employment had been terminated and, if not, where she should report to work. In a written response dated September 19, the credit union advised that no apology would be issued and that Grewal's insubordination had made a continued employment relationship "virtually impossible." The employer's letter went on to state that it had not terminated Grewal's employment. Rather, the employer said, Grewal had "acted in a manner that is incompatible with continued employment with the credit union" and had herself severed the employment relationship, demonstrating a clear intention not to return to work.

Grewal initiated an action in British Columbia Supreme Court seeking damages for wrongful dismissal. That action was dismissed.

Justice Goepel began by determining that Grewal had not resigned but was dismissed, because an intention to resign was not contained in the September 1 letter nor was it consistent with Grewal's subsequent conduct, considering that she had repeatedly indicated her willingness to work.

Turning to the issue of whether the employer had just cause to dismiss Grewal, the judge found that her conduct up to the point of the September 1 letter had not reached the point of just cause for dismissal. However, he held that the September 1 letter "tip[ped] the balance" and irrevocably damaged the employment relationship, as "[t]he language of the letter was disrespectful and inflammatory. The accusations were serious and covered most aspects of her working relationship." Noting that the letter had also been copied to the board of directors and the credit union regulator, Goepel considered that it "was obviously intended to do serious damage to Mr. Sohi. The criticism of Mr. Sohi was disrespectful in tone and language and was irreconcilable with Ms. Grewal's continued employment."

In the result, Justice Goepel dismissed the wrongful dismissal action, ruling that "[t]he September 1 letter cannot be considered in a vacuum. It was the culmination of a litany of ongoing difficulties in the employment relationship. While the prior matters in themselves may not have justified termination, [the employer] was entitled to consider [Grewal's] past misconduct in determining whether it had just cause for dismissal."

Grewal appealed this decision to the British Columbia Court of Appeal.

The British Columbia Court of Appeal ruled that "it was open to the trial judge to reach the conclusions he did on the evidence that was presented to him." The British Columbia Court of Appeal dismissed Grewal's appeal.

Delivering the unanimous decision of a three-member panel of the Court, Justice Mary Saunders held that there was "ample evidence" for the judge's factual findings. According to Saunders: "As with all such cases in which the findings of fact are challenged on appeal but there is a foundation for the findings in the evidence, this is a case which, if it were to be won, was to be won at trial."

As for Grewal's invocation of a poisoned work environment, Justice Saunders held that it was not necessary for her to consider the issue and that it was more properly a trial issue. In her



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view: "The judge held [that] the letter, even in the context of all that had happened, permanently undermined the employment relationship and tipped the balance. In other words, it was a culminating incident justifying termination for cause. Only if Ms. Grewal can dislodge some of the findings of fact upon which that conclusion was based can we interfere with the order appealed."

In the result, remarking that "this court may not embark upon what is, in effect, a retrial of a case," Justice Saunders on behalf of the Court dismissed the appeal, finding no fault with the judge's determinations of fact and ruling that dismissal of the action was the appropriate result based on these findings.

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