

Bad Behaviour 2.0, Part 1: Employees Getting Away With . . .

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We scoured the judicial and arbitral decisions and found ten more random instances of egregious employee behaviour that Canadian courts and arbitrators excused. Since the judge or arbitrator found that the employers had no legal basis to find these employees, employers were hit with damages for wrongful dismissal and court costs. The employer was successful, only in the first case below, in overturning the original decision on appeal.

In reading these cases, one asks, “what was that judge (or arbitrator) thinking?” One might also consider whether such forbearance of co-worker harassment will continue.

- *Bannister v General Motors of Canada Ltd.*

Twenty six witnesses, mostly women aged 18 to 23, testified over fourteen days to their own sexual harassment experiences with Bannister, the senior security officer on site. Although this conduct violated corporate policy, the trial judge found this was typical behaviour in the General Motors industrial plant. Concluding that Bannister was wrongfully terminated, the trial judge awarded him \$119,510.41 plus prejudgment interest and costs. This decision was mercifully reversed by the Ontario Court of Appeal four years later in 1998.

- *Stone v Sybron Canada Ltd.*

Stone was employed with Sybron Canada for 16 years before his termination. Four women accused him of sexual harassment alleging he would grab their legs, poke their mid-sections, and run his fingers up their legs. All the women told him to stop. He did stop for a few shifts and then continued. He was also accused of drinking on the job. If he did not come to work drunk, he would be drunk by the end of the shift. He would put alcohol in his soft drink can and was too drunk by the end of his shift to perform his duties. In 2006, the judge found insufficient legal cause for the employer firing Stone and awarded him a notice period of 13 months, which was \$43,353.31.

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- *Soplet v Bank of Nova Scotia*

In 2005, an analyst with the Bank of Nova Scotia purchased marijuana during work hours at a colleague's workstation. For this, he was fired from his job. He admitted to purchasing the marijuana (an illegal act) and despite having annually signed the bank's Guidelines for Business Conduct, he deliberately breached said Guidelines. Still, he was awarded six months of wages in the amount of \$36,300, plus 10% for lost benefits, and 4% interest.

- *Chandran v National Bank*

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Virtually every subordinate employee complained about Chandran's “inappropriate management style.” He was a very experienced,

often-promoted senior manager at the National Bank. The complaints involved his condescending remarks and bullying. The bank found his behavior had a serious impact on employees and the morale of this office. The bank concluded Chandran had made condescending remarks, criticized and embarrassed employees in front of others, raised his voice and shouted, was volatile and demonstrated bullying behaviour. He had been previously cautioned about this "arrogant and harsh behaviour," which description of his management style he agreed with. He refused to take responsibility for his actions. After he refused to take one of two other jobs offered to him at the bank, Chandran was fired. Aged 41, with 18 years of service with the employer, he had been earning about \$100,000 at the time. In 2011, the Ontario court awarded Chandran 14 months of wages (\$115,295) and benefits, plus costs in the amount of \$65,833.35 for his wrongful dismissal. The case was cited with approval by the Supreme Court of Canada in 2016.

▪ *Warren Ens v Gfs Prairies Inc.*

In 2010, Ens was a transit and delivery driver for 10 years in Saskatchewan who had earned generally good performance assessments. He protested a scheduled driving assignment. In doing so, he used profanities, accused his supervisor of lying and covering up, and described his managers as "gullible". For this, he received a written warning. A few months later when he was scheduled for overtime driving, which he had done in the past and which was occasionally a job requirement, he left work without notice or finishing his assigned deliveries for the day. When asked to return, he refused. Given the insubordination a few months earlier and this abandonment of duties, the employer fired him. The employer also noted another incident the year before where Ens had made derogatory comments about a co-worker. Still, Ens was awarded wrongful dismissal damages of 18 weeks which, after deducting mitigated earnings, amounted to \$14,122.00, plus costs.

Look for Cases 6-10 in Issue 42-2 of LawNow Magazine.

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