

Cumulative Cause.1

January 4, 2017 (2017-01-04T13:36:11+00:00) By Peter Bowal (Posts by Peter Bowal)



The workplace “was not a grade five classroom”.

Kim v. International Triathlon Union

Introduction

The workplace is a challenging setting to manage. One must be proficient at dealing with a range of people with all kinds of personalities, backgrounds and styles. The manager in small enterprises often also serves as the Human Resources and Legal Departments. One is expected to know employment and labour law and manage people in precise measure according to the law. Review of those management decisions may come in the form of a lawsuit years later where all the splendid details are intricately laid out with adversarial obsession before the whole world.

Invariably, the small business manager will not have all the facts, perspectives and arguments – not to mention the legal principles, precedents and distinctions – that will be placed before the judge, who is also a latecomer and stranger to the scene that must be managed today. The well laid out ordering, after the fact, of what decisions should have been made are neither easy to predict nor do they readily reflect all workplace realities.

A recent case from British Columbia considered whether the senior communications manager for a sporting organization went too far in muddling her professional and personal commentary on social media. Her personal style and criticisms of her employer attracted most of the attention.

This is the first installment of a two-part article that examines the legal concept of cumulative cause.

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Senior Communications Manager Tests Limits of Communications

Ms. Paula Kim (“Kim”), with a broadcasting journalism degree from Ryerson University, found her dream job working in the field of sports. In her early 30s, she was earning \$77,000 per year and was travelling the world. She worked for the International Triathlon Union (“ITU”), the international governing body for the triathlon sports that schedules international triathlons, sets the competition rules and prize money, and certifies officials.

But Kim also was active on her Facebook and Twitter accounts and her blog. There her inner voice was readily expressed to the world. After the ITU world championships ended, she wrote: “2012 ITU season...DONE. now leave me alone until 2013!!” Some interpreted that she was fed up with her job or felt harassed in it.

A recent case from British Columbia considered whether the senior communications manager

She also posted “surprisingly fun congress after-party last night. Probly [sic] only time I’ll see so many Eboard members hungover & lamenting those tequila shots . . . I wonder if other IF

for a sporting organization went too far in muddling her professional and personal commentary on social media.

congresses have as much propaganda as ours.” This tweet came during the important annual Congress, implied that Executive Board members had gotten drunk during the event, and that the international federation of an

Olympic sport uses propaganda. She also tweeted, in reference to her employer, “guess we have no values or morals, we just go where ever the money is” and “hey ITU, remember this next time I fly off the deep end ... If I didn’t care, I wouldn’t get mad.”

Kim said she was just trying to be funny, and she had an emotional side. She said no one had complained to her.

Others found Kim to be rude, unprofessional and insubordinate. She could be sarcastic, aggressive and grew increasingly negative. She had fallouts with co-workers, and yelled and swore in front of staff. A disagreement arose with her supervisor about vacation compensation. Although the workplace was not amenable to gossip, she took to her blog and, in a nasty, rambling tirade, compared her supervisor to her abusive mother.

Under the title “taking shit” Kim wrote:

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...i rarely go home and rarely call because deep down i have never forgiven her and because I remember all too well all the beatings i took. my mother is the only person on earth that was so skilled as making me feel like an insignificant bag of shit and made me feel as though I was never good enough, for anything. until today. today for the first time in a long time i felt like that kid all over again; beaten, discouraged, alone and scared, after the most disappointing conversation you could possibly have with your boss. the same horrible, sickly feeling of someone above you kicking you down with lies and senseless put downs and insults and zero reality all flooded back in a horrible, despicable wave of nostalgia. and for the first time in many years i actually sobbed (by myself in the bathroom of course) which i almost never do. and of course she’s right, how can i possibly be right when i’m not the authority figure! just like when I was a kid, i don’t feel like I’ve done anything wrong but it doesn’t matter because this person that i stupidly thought cared doesn’t give a shit and just wants to beat my head in. her perception of reality is so clouded and distorted that all she sees is her own version and not the real version of truth. in the end some people will only believe what they want to believe and and not what’s real. these same people will never find fault in their own actions, no matter how wrong and inappropriate it was. my mother never once apologized to me, and i don’t ever expect one. in fact she used to say it was my fault that she hit me, that i drove her to such anger. how do you argue with that? you can’t, and never will. you can’t fight logically with an illogical person. Some relationships will never rebound from such abuse. never. and if i was 9 again I would stupidly ask why, but i’m older and wiser now so i don’t bother to ask why, because i already know the answer; sometimes life just isn’t fair. sometimes people change for the worst and sometimes people are just evil pieces of shit and just need to bring you down to make themselves feel more powerful or better than you. not being good enough is probably my deepest insecurity, all thanks to my mother. haunted by this feeling as a kid, i broke free of it slowly through university and then most importantly as an adult in the working world. but now thanks to my current boss, it is back in full force. and as my former colleague used to say, the spirit is broken.

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Kim associated her supervisor, the Secretary-General of the International Triathlon Union, with physical and emotional abuse. She dismissed it as facetious, overly dramatic and theatric because she was a passionate person. She said no one told her

it was inappropriate and she did not think it was damaging to her supervisor's reputation, although the blog post was read by international colleagues.

In other personal tweets, Kim shared her frank opinions on teams, media, competitors and outcomes. She referred to the ITU, invoked real athletes in a partisan fashion, and used vernacular language such as "holy crap." The British ITU chief wrote a letter starkly critical of Kim for "showing so little regard for the importance of correct and neutral communications ... and worse when that person is responsible for the ITU communications policy." The New Zealand chief wrote and complained about Kim "getting really mad, yelling and picked up a bowl of candy, threw it into the wall" and telling others they could not work in that room.

After this, some 22 months after she was hired, Kim was dismissed with pay in lieu of notice for her unacceptable "communication style". She was paid two weeks salary under provincial legislation and offered a further five weeks of pay if she would sign a release.

She refused to take this package. Instead, she let fly some more disrespectful and insulting tweets regarding a former ITU President, and a former boss. She sued for wrongful dismissal where she claimed over \$65,000 by way of damages.

Was There Cause for Dismissal?

The employer initially took the position that Kim was dismissed without cause to protect her reputation. After she sued for wrongful dismissal, ITU changed its position and alleged that it had sufficient legal cause for dismissing Kim.

What do you think? Was Kim's behaviour leading up to her firing sufficient to legally justify it? Or should ITU pay her damages for firing her? If so, how much money?

The answer to these questions will come in the next issue of *LawNow*.

Filed Under: Employment Law

Tagged With: human rights, remedies

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