



## Why good business reasons for termination of employment do not always mean a serious reason at law - A look at 2015 Court of Appeal decisions on wrongful dismissal

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In 2015, the Court of Appeal of Quebec has had opportunities to revisit how an employer must justify termination for a serious reason (cause). In so doing, the Court reminded us that a legitimate business rationale for termination of employment does not necessarily mean a serious reason at law for termination without notice.

### The *Corporatek* Case

*Corporatek inc.*, [2015 QCCA 170](#), is worth noting in this regard.

In *Corporatek*, the employer, a software development company, terminated the employment of its Vice-President of Legal Affairs, alleging cause and citing a number of deficiencies, including: (i) lack of fit with the firm culture and integration with other team members, (ii) subpar performance (e.g. a number of incomplete or erroneous legal documents or opinions); (iii) breach of the confidentiality policy, and (iv) excessive absenteeism. The employer stressed that The employee was subject to high behaviour and performance standards, considering that she held the title of Vice-President.

The Superior Court rejected a number of the employer's claims, including its characterization of the authority and status of The employee.

However, the Court recognized that the employee committed a number of mistakes in her work. Nevertheless, noted the Court, and notwithstanding her title of Vice-President, The employee was still entitled to understand the allegations made against her and benefit from an opportunity to correct her behaviour. She should have been informed that her employment was in jeopardy and advised of the reasons therefor. It was her superior's responsibility to ensure that this process was followed.

The Court of Appeal opined that the Superior Court judge was justified in holding that there was no serious reason for termination without notice, despite the fact that he recognized shortcomings in the employee's performance.

The Court of Appeal stressed that (i) the tasks and hierarchal status of the employee were unclear, (ii) her superiors did not intervene when her colleagues were refusing to collaborate with her, and (iii) her employer failed to specify its expectations.

### The Dollo Case

In another 2015 decision, *Premier Tech Itée v. Dollo*, [2015 QCCA 1159](#), previously discussed [by our colleagues](#), the Court of Appeal also notes that the requirement of a serious reason for termination of employment (without notice) must fully apply no matter the status of the dismissed employee.

Thus, in the absence of shortcomings that rise to the level of severity and frequency required to constitute a serious reason, simply losing faith in a senior employee does not absolve an employer from its legal duty to provide reasonable notice of termination of employment, even though this loss of confidence may well constitute a legitimate and sufficient business reason for terminating the employment relationship.

Simply put, in a non-disciplinary context and absent exceptional circumstances, prior to terminating employment for serious reason, an employer must first advise the employee that he faces the risk of termination for a serious reason. The employer must also explain the reasons why the employee faces the risk of dismissal and provide an opportunity for redress within a reasonable period of time. This would apply no matter the employee's status or position.

In the absence of such a process undertaken in good faith, an employer may well have legitimate business reasons to dismiss an employee. However, to the extent that a good business rationale does not make for a sufficient serious reason at law, an employer may still be held to its obligation to provide reasonable notice of termination of employment.

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