



The perils of a poor investigation

On May 31, 2010, the Liquor Distribution Branch (“LDB”) terminated Ms. Vernon from her employment for just cause. The LDB said Ms. Vernon, a Senior Store Manager with 30 years’ service, engaged in “gross workplace misconduct including bullying, harassing and intimidating subordinates”.

An employee reporting to Ms. Vernon had made a written complaint about her alleging several specific acts of misconduct. The LDB launched an investigation into her conduct and terminated her employment based on that investigation.

After a lengthy trial, the court determined that the employer did not have just cause to dismiss Ms. Vernon without notice. Ms. Vernon was awarded 18 months’ pay in lieu of notice, special damages, and aggravated and punitive damages. In reaching its decision, the court was very critical of the LDB’s investigation into Ms. Vernon’s conduct.

The trial judge concluded that the investigation process was **neither objective nor fair**. The court’s review of the investigation’s flaws is a reminder of the requirements of a good investigation.

1. Appoint the right investigator. The lead investigator was one of the employer’s labour relations advisors. She had previously given Ms. Vernon advice about the management of employee issues including issues concerning Ms. Vernon and the employee who had complained about her. Given her prior involvement in the matter, she should not have been put in charge of the investigation.

2. Investigator must remain impartial throughout investigation. After hearing the complainant’s allegations, the investigator appeared to be convinced of the complainant’s credibility and Ms. Vernon’s wrongdoing. The investigator prepared a list of witnesses to interview who she knew, based on her role as a labour relations advisor, would likely have negative things to say about Ms. Vernon.

At the conclusion of the investigation, the investigator prepared a Recommendation Memo to the General Manager and recommended termination for just cause. The investigator admitted at trial that instead of objectively reporting the investigation findings in the Memo, the document was written with the intention of proving Ms. Vernon was guilty of misconduct.

3. Conduct interviews fairly. When Ms. Vernon attended a meeting with the labour relations advisor about the complaint, she believed it to be an informal discussion. Instead, Ms. Vernon was unexpectedly subjected to an intense interrogation. Ms. Vernon was also presented with the written complaint and asked for her immediate response to the eight separate allegations of misconduct. The interviews of other witnesses were not carried out in an impartial manner. Witnesses who spoke favourably about Ms. Vernon were accused of lying and were chided and yelled at when they gave answers that supported Ms. Vernon.

4. Investigate the allegations made. Several of the specific complaints made by the complainant were not canvassed with the witnesses. They remained uninvestigated and unproven.

5. Provide an opportunity to respond to allegations. Ms. Vernon was not given an opportunity to respond to matters raised by witnesses during the investigator's interviews.

6. Accurately record and report the evidence. The court did not accept the investigator's testimony that Ms. Vernon initially denied all of the complaint allegations. The court found her oral reports to management of her interview with Ms. Vernon were "inaccurate and misleading". The investigator's Recommendation Memo was found to be "replete with inaccuracies".

The investigator's reports and Memo had important consequences. One of the primary reasons the employer decided to terminate Ms. Vernon was its mistaken belief that she did not admit any wrongdoing of any kind. Management made its decision based on inaccurate information provided by the investigators.

7. Conclude the investigation and communicate consequences in a timely manner. The complaint was made on March 1 and investigated until mid April. On April 19, the employer met with Ms. Vernon and suspended her without pay. On May 31 Ms. Vernon received a letter informing her she had been terminated for just cause. The court found it "egregious" that the employer left Ms. Vernon "in limbo" from April 19 to May 31.

"The investigation was flawed from beginning to end. It was neither objective nor fair."

Mr. Justice Richard Goepel, *Vernon v. B.C.* (Ministry of Housing and Social Development, Liquor Distribution Branch), 2012 BCSC 133

This case shows how a poorly conducted investigation can have extremely significant consequences for all parties. It is critical that all aspects of an investigation, from the appointment of the investigator to the report and recommendations, be carefully considered, objective and fair. Failure to maintain these standards will in most cases call the employer's conclusions into question and jeopardize its ability to justify any decisions that flow from the investigation.