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Applying the Legal Test for Just Cause for Leaving Employment: FCA

Good personal reasons for leaving employment don't necessarily meet the legal test for "just cause" according to the Federal Court of Appeal in [Canada \(Attorney General\) v. Graham](#), 2011 FCA 311. In this case, an employee who left his Winnipeg job so that he could find work in Dauphin and save money while living at home with his parents for the summer did not have just cause to do so within the meaning of the *Employment Insurance Act*. The court overturned the decisions of the Umpire and Board, finding that they failed to apply the legal test for just cause (whether the claimant had no reasonable alternative to leaving his employment) to the claimant's circumstances.

ONCA's "Intrusion Upon Seclusion" Tort May Affect Employers

Employers may want to revisit their policies on collection and dissemination of private information following the Ontario Court of Appeal decision in [Jones v. Tsige](#), 2012 ONCA 32, a case involving the electronic stalking of a bank employee's financial records by a fellow employee. The court confirmed "the existence of a right of action for intrusion upon seclusion" at para.65, but noted that such claims "will arise only for deliberate and significant invasions of personal privacy" such as intrusions into "...financial or health records, sexual practices and orientation, employment, diary or private correspondence that, viewed objectively on the reasonable person standard, can be described as highly offensive." (para.72) In the circumstances of this case (where the bank had disciplined the employee for violating its Code of Business Conduct and Ethics) the employer was not implicated, but commentators caution that the decision could create new risks for employers:

- [New Invasion of Privacy Tort Has Implications for Employers](#), Blakes bulletin;
- ["Intrusion Upon Seclusion": Privacy Concerns for Employers in Ontario](#), which can be found in the Canada section of the International Employment and Labour Law Blog;
- [All eyes on invasion of privacy tort](#), *Lawyers Weekly*;
- [The cost of privacy: invasion of personal privacy can attract damages in Ontario](#) and [Intrusion Upon Seclusion: Watch how far you take that!](#) (which cites a recent labour decision in which the arbitrator found that the tort of intrusion upon seclusion did not interfere with an employer's reasonable requests for medical information from an employee in an accommodation context), both from Workplace Wire.

BCCA Decision Complicates Working Notice

Refusing to continue to work during an inadequate notice period does not deprive an employee of the right to sue for wrongful dismissal according to the B.C. Court of Appeal in [Giza v. Sechelt School Bus Service Ltd.](#), 2012 BCCA 18. The employee repudiated the employment contract when he quit, but not any rights which had accrued prior to the repudiation, including the right to sue for damages in lieu of proper notice. The court found six months' notice to be reasonable for the 5-year employee, but deducted 5 weeks from the damages calculation to account for the actual notice period not worked by the employee. These articles discuss how the decision complicates matters for employers who want to use working notice:

- [When picking a notice period is like a game of chicken](#), Workplace Wire;
- [Smashing working notice](#), *Lawyers Weekly*.

Volunteer Firefighters Candidates for Collective Bargaining: MBQB

A Manitoba Labour Board decision to certify the MGEU as bargaining agent for "all employees employed as firefighters" in a municipality (including volunteer/casual firefighters who are not scheduled workers but who are paid a nominal hourly rate when they work and must respond to 25% of the emergency calls in a given year) was reasonable according to the court in [Rural Municipality of Springfield v. The Manitoba Labour Board](#), 2012 MBQB 65. The court rejected the RM's argument that the labour board decision was unreasonable in that it failed to address the issue of "substantial employment connection" and whether or not a stand-alone unit of casual firefighters is appropriate for collective bargaining.

Labour and Employment Law News

These publications discuss current labour and employment law issues:

- Several recent commentators have questioned the practice of asking job applicants to provide their Facebook passwords. See, for example, [Demanding Social Media Passwords From Job Seekers Is Wrong](#), Slaw and [Can an Employer ask a Job Applicant for their Facebook Password?](#), Doorey's Workplace blog. For an employer-friendly perspective on this issue see Dan Michaluk's [post](#) on the All About Information blog;
- [Recent Developments in Workplace Law 2012](#) - a Heenan Blaikie publication summarizing key developments in labour and employment, human rights and pensions law;
- [Biased Workplace Investigation Warrants Punitive Damages, says Alberta Court of Appeal](#) - this Workplace Wire post discusses the Alberta Court of Appeal decision in [Elgert v. Home Hardware Stores Limited](#), 2011 ABCA 112, where a biased sexual harassment investigation resulted in a large punitive damages award denouncing the "malicious and high-handed misconduct" of the employer;
- The *Law Times* article [Court upholds \\$470K award for workplace assault](#) discusses [M.B. v. 2014052 Ontario Ltd. \(Deluxe Windows of Canada\)](#), 2012 ONCA 135, in which the appeal court upheld an inordinately high jury award of damages for a workplace sexual assault;
- Some employers are requiring employees to sign "love contracts" in order to minimize the risks inherent in office romances according to this Slaw [post](#)., which references several other articles on the topic.

Accommodation in the Workplace: LSM/MBA Joint Program

Presenters Aaron Berg, Kris Gibson, Grant Mitchell, and Donna Seale will review significant new cases in the area of reasonable accommodation, new legislation on flexible workplaces, the law on accessibility, parental leave and family status, and ethical issues in human rights cases at this [half day program](#) on May 28, 2012, from 1:00 to 4:00 p.m. in the Law Society classroom. [Register](#) soon to ensure your spot.

Labour & Employment Law Conference: "Making it Work for Your Clients"

Registration is now open for this [one day conference](#) on labour and employment law sponsored by several sections of the Canadian Bar Association. The conference takes place May 4, 2012 in Halifax, Nova Scotia. Topics to be covered include construction industry labour relations, EI Umpire appeals, occupational health and safety, and damages in wrongful dismissals. Register on the CBA website.

National Human Rights Conference

[Are We There Yet?](#) is the theme of the Canadian Association of Statutory Human Rights Agencies' 2012 national human rights conference. It takes place at The Forks in Winnipeg, from June 17 -19, 2012. [Program sessions](#) will focus on celebrating human rights successes and identifying areas where advocacy and change are needed.

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