

## Ontario Court Upholds For-Cause Dismissal of Health & Safety Manager for Mishandling of Her Own WSIB Claim

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In *Lagala v. Patene Building Supplies Ltd.*,<sup>1</sup> the Ontario Superior Court of Justice dismissed a wrongful termination claim commenced by the former Health, Safety and Training Manager of a building supply company whose employment had been terminated for cause. The employee had been dismissed following her failure to report her own workplace accident and injury to her employer for over six months and her non-adherence to workplace safety policies – the very policies that she was responsible for drafting and enforcing.

### Background

At the time of her dismissal, Shari Lagala was 56 years old and had been employed as a Health, Safety and Training Manager at Patene Building Supplies Ltd. (the Company) for more than 13 years. In that role, Ms. Lagala was responsible for ensuring that the Company complied with all requirements of the applicable health and safety legislation (including the *Workplace Safety and Insurance Act, 1997* (WSIA)), maintaining an effective system to investigate workplace accidents and incidents, and establishing policies and procedures to minimize accident costs. One of her primary duties was drafting and administering accident and injury reporting policies and procedures.

By all accounts, Ms. Lagala was firm and diligent in her implementation and enforcement of the Company's workplace safety and accident reporting policies. Before the events in question, Ms. Lagala had no disciplinary record and was a valued member of the Company's management team.

In March 2019, Ms. Lagala slipped and fell in the Company parking lot. She asserted that she did not report this accident to a supervisor at the time because she was embarrassed and did not view it as a "serious" accident. However, in the months that followed, Ms. Lagala claimed she experienced worsening back pain and eventually sought medical treatment.

Between March and September 2019, Ms. Lagala submitted her usual monthly reports of workplace accidents and incidents to Company management, but such reports made no reference to Ms. Lagala's own accident. It was not until October 2019, when Ms. Lagala submitted her report for August and September 2019, that she included a notation that she had "[fallen] at the branch in early spring."

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In the interim, Ms. Lagala had initiated and managed her own claim with the Workplace Safety and Insurance Board (WSIB), without notifying Company management, and received benefits for physiotherapy.

In October 2019, the WSIB asked Ms. Lagala to have another supervisor sign off on the Form 7 – Employer’s Report of Injury, which she had submitted to the WSIB several months earlier. To obtain such sign-off, Ms. Lagala approached the Company’s Traffic Manager who had no knowledge of her accident or injury and dictated to him the contents of an email she would need him send to the WSIB to verify the information in the Form 7. He did so at her direction. At trial, the Traffic Manager testified that he and Ms. Lagala were childhood friends, she had gotten him his job at the Company, her position at the Company was senior to his, and he felt he had no other choice.

It was only when the Traffic Manager came forward to report the situation to the Company approximately one month later that the Company learned of Ms. Lagala’s WSIB claim. The Company then conducted an investigation, following which it concluded that it had lost trust in Ms. Lagala and made the decision to terminate her employment for cause. Ms. Lagala then sued the Company for wrongful dismissal.

## Superior Court Upholds For-Cause Dismissal

The Court concluded that Ms. Lagala’s failure to adhere to the very Company policies she was entrusted to enforce, combined with her dishonesty when confronted with her own misconduct, were incompatible with the fundamental terms of her employment relationship. It pointed to the following incidents to support its conclusion that the Company was justified in terminating Ms. Lagala’s employment for just cause:

- By failing to report her workplace accident in any way until October 2019, *after* the WSIB had allowed her claim, Ms. Lagala not only breached Company policies but also left the Company at risk of being found in violation of its accident reporting obligations under the WSIA. She had, in effect, knowingly put the Company in a position where it was in breach of the WSIA.
- Ms. Lagala’s attempt to rely upon her long-standing relationship with the Company’s Traffic Manager, to whom she was a superior, and the influence she had over him to conceal her own failure to promptly report her workplace accident was “significant misconduct” in its own right, which might, on its own, have been sufficient to support the Company’s decision to terminate Ms. Lagala’s employment for cause.
- Ms. Lagala’s failure to recognize and avoid the obvious conflict of interest in reporting her own WSIB claim demonstrated a significant lapse in judgment. Clearly, Ms. Lagala would be interested in obtaining benefits through her WSIB claim, whereas the Company would want a full investigation to be conducted to determine her entitlement to benefits, particularly given the inconsistencies in Ms. Lagala’s reporting.
- During the Company’s investigation into her workplace accident, Ms. Lagala had failed to produce a complete copy of her WSIB file, omitting certain documents that directly related to her misconduct,

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including the WSIB's decision letter confirming that she would be entitled to benefits. Her failure to be truthful and accurate during the Company's investigation further confirmed that she had engaged in a "continuing pattern of misconduct, rather than merely a single moment when she demonstrated a lack of judgment."

Finally, the Court confirmed that all the above-referenced misconduct and dishonesty needed to be considered in light of the fact that Ms. Lagala was directly responsible for the administration of the Company's health and safety policies. She knew, or ought to have known, what the Company's policies required her to do following her workplace accident, and deliberately failed to follow those policies. The Court stated:

*[85] The Plaintiff's misconduct, and her dishonesty when confronted with that misconduct, irretrievably destroyed her ability to carry out her employment responsibilities. Put simply, an employer cannot be expected to employ a Health and Safety manager who does not comply with health and safety policies when those policies affect her, and then is dishonest with her employer about what happened after the fact.*

## Takeaways

Just cause for dismissal has been described by our courts as the "capital punishment of employment law." Establishing a just cause defence can be extremely difficult for employers as it requires evidence of employee misconduct so egregious that it "intimates the employee's abandonment of the intention to remain part of the employment relationship."<sup>2</sup> In most cases, failing to report a workplace accident, illness, or injury, without more, would not be sufficiently egregious to support a for-cause termination. The *Lagala* case is unique in that the employee in question was directly responsible for drafting and enforcing the same health and safety policies that she so flagrantly violated and was dishonest when confronted by her employer with evidence of her own misconduct.

The *Lagala* decision also demonstrates the value of conducting a thorough workplace investigation prior to proceeding with termination for cause. The evidence the Company had obtained during its investigation into Ms. Lagala's workplace accident, and Ms. Lagala's failure to be forthright and honest during such investigation, further supported the employer's ultimate decision to proceed with termination for cause.

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<sup>1</sup> 2024 ONSC 253.

<sup>2</sup> *McKinley v. BC Tel*, 2001 SCC 38 at para. 33.