

## AFTER-ACQUIRED CAUSE LEGAL DOCTRINE ALIVE AND WELL IN CANADA

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Another recent decision from the Alberta Court of King's Bench ("ABKB"), *Sobolewski v. Advanced Completions Technology Services Ltd.*, 2026 ABKB 10, provides an illustrative example that, when applied correctly, the doctrine of after-acquired cause is a powerful tool to enable employers to justify a for-cause termination, even after the fact.

As the doctrine does not automatically apply, and is often misunderstood, this decision helps clarify the test where an employee has engaged in misconduct that was not known at the time of dismissal, but which is serious enough to constitute cause and thereby justify the termination and mitigate an employer's exposure.

In order to succeed, the doctrine requires that the employee's misconduct occurred *before* the termination and that it *would have* constituted cause, but was not known to the employer at the time of the dismissal. To meet this test, the Court explored the following two-step analysis:

1. Whether cause could have been said to have objectively existed prior to the termination; and
2. Whether the misconduct in question was known or condoned by the employer, whether expressly or implicitly.

Importantly, even after applying the two-step analysis, the Court in *Sobolewski* went on to consider the proportionality assessment as set out in the seminal case of *McKinley v BC Tel* to determine whether, in context, the misconduct was such that it rendered the employment relationship no longer tenable. It ultimately found that the dismissal was indeed a proportionate, and in fact the only response to the employee's misconduct open to the employer.

In arriving at this determination, the Court considered various contextual factors which it balanced and weighed, both in favour of, and against dismissal as a just response, reiterating that a for-cause termination is the "capital punishment" of employment law, and a justified dismissal is therefore, the ultimate sanction.

The factors weighing in favour of a dismissal included:

- the misconduct was an intentional, planned, deliberate, and sophisticated fabrication of a document considering the high level of information and details required to change the originating certificate into one that looked 'real' enough to be relied on and not rouse suspicion;
- the fact that the employee did not conceal the falsification could be seen as an indication of a cavalier attitude towards his conduct;
- he repeatedly minimized his dishonesty;
- the employee's role as President of a small, closely held boutique business required the highest level of ethics and fiduciary trust, which further heightened the misconduct because he did not do enough to protect his reputation and that of the company; and
- the misconduct could be viewed as a serious betrayal of both his close personal and business relationships.

If you have any questions about after-acquired cause, terminations for cause, or terminations generally, please contact Turner HR Law for guidance. For more information, please visit [www.turnerhrlaw.com](http://www.turnerhrlaw.com).