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# Benefits *Bulletin*

*Benefit News to Keep You in the Know and the Now*

March 2015

## **When Personal Conduct Collides with Professional Life**

There have been innumerable instances of well-known employees being fired for their actions in their personal lives. Who can forget golfing star, Tiger Woods' rapid fall from grace? More recently, there was the Jian Ghomeshi scandal and the cancellation (at least in the U.S.) of Bill Cosby's shows after allegations of past sexual abuse came to light. Celebrity news may make the biggest waves but termination of employment or contract due to inappropriate or illegal behaviour is not limited to celebrities. Take the case of the Quebec teacher relieved from her duties after her role in a 50-year old erotic film is uncovered, or the suspension of the so-called "fake Veteran" who portrayed himself as a decorated war veteran at a Remembrance Day ceremony, or the dentistry students at Dalhousie University making disparaging remarks against their fellow students.

These situations have ignited the conversation surrounding an employer's ability to take disciplinary action against an employee for actions and comments made in the employee's personal life.

Some employers have incorporated clauses into their employment agreements that outline acceptable conduct both on and off company time. These so-called Morality Clauses have long been included in celebrity endorsement contracts. Eventually, they

made their way into the C-Suite, and are now filtering down through all levels of employment. Essentially they are used to protect an employer from financial or reputational harm.

The growth of social media is a major impetus behind such contracts. No longer is a comment one to one – it's one to the world. Our online profiles provide links to all facets of our lives so the division between one's personal life and professional life becomes blurred.

Whether a morality clause is already present or is being added to some or all employment contracts, employers must be able to demonstrate that all parties were aware of the clause and understood its meaning. To be recognized by the courts, clauses must be clearly defined, limited in scope, and in accordance with human rights.

Even with a well-defined morality clause, employers need to exercise caution when terminating with cause. An incident should not be considered in isolation but rather examined within the greater context of the situation and the employment relationship. Consider:

- Length of employment
- Prior misconduct
- Prior discipline
- The nature of the employee's position
- The level of trust involved

- Other relevant circumstances such as terms of a collective agreement

A blatant violation of a code of conduct or ethics that has had a negative impact to the employer's reputation or finances can result in a justified termination for cause. However if the violation was a one-off incident that caused little to no harm, perhaps a warning or suspension is more appropriate.

When a termination with cause is not valid, but the employer feels that the employee's behaviour no longer exemplifies their corporate culture or values, they can still terminate the employee but on a without-cause basis. This route requires proper notice of termination and severance and must not be in violation of the Human Rights Code.

The Charter of Rights and Freedoms grants us "freedom of thought, belief, opinion and expression ...". Therefore, some people may argue that their comments are protected. However, the Charter serves to protect citizens from *criminal prosecution or conviction* based on their comments (within certain limits such as hate laws). It does not provide job protection.

Employees must recognize that the world is a smaller place and when their actions and comments can track back to their employer, their employment may be put into jeopardy.

For assistance in drafting a Morality Clause to be included in an employment contract or employee handbook, contact an employment lawyer.

### Retirement Savings Plan Review

Employers offering a capital accumulation savings plan, such as a group RRSP, TFSA, or pension must periodically review their plan to ensure that members have the appropriate information, options, and tools available to make educated investment decisions.

A review will consider:

- Funds offered – is there a variety at various risk levels?; is the number of funds available reasonable?; what is the default?
- Provider – is the current provider offering plan members the information and tools they need to make decisions?; are their administrative practices up to standard?; what funds are available? and what has their performance been like?
- Plan Member feedback

Now that year-end and T4 season is done, perhaps now is a good time to undertake this task. Contact your GMS Insurance associate for assistance in doing this review.

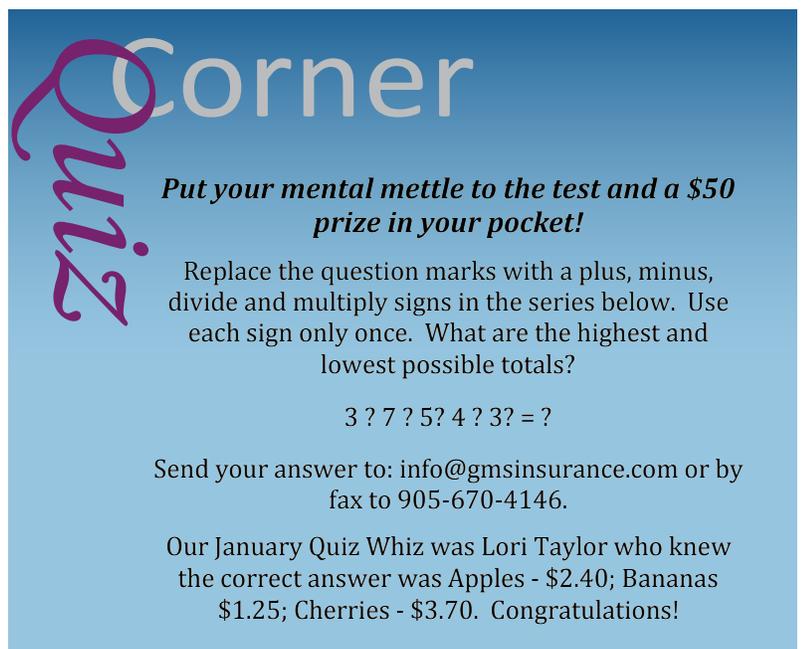
#### Sources:

ProfitGuide.com – Should you Impose Morality Clauses on Employees?, Laura Williams, Oct 30/14

Hrreporter.com – Freedom of speech doesn't mean freedom from consequences, Stuart Rudner, Jun 9/14

Hrreporter.com – Jian Ghomeshi: Do employers belong in the bedroom?, Stuart Rudner, Oct 27/14

Canadian HR Reporter – Should 'fake' veteran be fired?, Sarah Dobson, pg 1, Dec 15/14



**Put your mental mettle to the test and a \$50 prize in your pocket!**

Replace the question marks with a plus, minus, divide and multiply signs in the series below. Use each sign only once. What are the highest and lowest possible totals?

3 ? 7 ? 5 ? 4 ? 3 ? = ?

Send your answer to: [info@gmsinsurance.com](mailto:info@gmsinsurance.com) or by fax to 905-670-4146.

Our January Quiz Whiz was Lori Taylor who knew the correct answer was Apples - \$2.40; Bananas \$1.25; Cherries - \$3.70. Congratulations!