



## Employees May Secretly Record Their Coworkers, But They Can Be Dismissed For It

### June 2022 Employer Alert

With modern technology it is no longer uncommon for employees to secretly record discussions with their coworkers and managers. If an employee is summoned into a disciplinary meeting, they may decide to secretly hit record on their phone. In Canada only one-party consent is required for recording a conversation. In other words, if one person involved in the conversation consents to the recording then they can legally record it, even in secret. This does not mean, though, that their recording of the conversation is without potential consequences.

As an employer, if an employee engages in secretly recording their coworkers and/or managers, then you may be able to dismiss the employee for wilful misconduct and just cause.

In the recent decision of *Shalagin v. Mercer Celgar Limited Partnership*, the British Columbia Superior Court confirmed that an employer may dismiss an employee for cause for secretly recording colleagues at work. In that case an employee was dismissed without cause and then sued for his common law termination entitlements. During litigation it was revealed that the employee had made hundreds of secret workplace recordings during conversations with his coworkers and managers. In light of this new information the employer amended its defence to allege that it now had learned of just cause grounds to dismiss the employee (i.e. after-acquired cause). The employee claimed he had made the recordings to help him learn English and to protect

#### Authors

**Christine Ashton**  
905-940-0526  
[cashton@wvllp.ca](mailto:cashton@wvllp.ca)

**Shalinee Malhotra**  
905-940-8005  
[smalhotra@wvllp.ca](mailto:smalhotra@wvllp.ca)

#### Our Employment/Labour Lawyers



**Christine Ashton**



**Daniel Condon**



**Doug Langley**



**Shalinee Malhotra**

himself from mistreatment. The Court held that, while not illegal, the employee knew the recordings were unethical and would have upset his coworkers. The number of recordings, the period of time over which they were made, and that personal information was recorded concerned the Court. The Court dismissed the employee's claim and held that the secret recordings amounted to just cause to terminate the employment.

To deter employees from engaging in secret recordings employers may wish to expressly prohibit workplace recordings in the employee handbook or in a company policy. By establishing an anti-recording policy it is also more likely that you can properly dismiss an employee for wilful misconduct and just cause if they then violate the policy.

If an employer learns of an employee secretly recording conversations they may be able to dismiss the employee for wilful misconduct and just cause. Whether or not there are proper grounds on which to allege wilful misconduct and just cause will depend on the specific facts. Further, employers will need to carefully handle the matter, including allowing the employee an opportunity to explain themselves. Employers should be cautious of claiming just cause. The Courts have repeatedly come down on employers for baselessly alleging just cause.

For more information or for assistance with handling workplace recording concerns or terminations regarding the same, please contact [our firm](#).

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**905.940.8700**

**information@wvllp.ca**

60 Columbia Way, 7th Floor | Markham, Ontario | Canada L3R 0C9

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