

## Firing an Employee for Off-Duty Drinking and Driving: A Cautionary Tale

### *Klonteig v. West Kelowna (District), 2018 BCSC 124*

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#### A: Introduction

The British Columbia Supreme Court recently released a decision confirming that local governments should proceed with caution when considering whether to fire an employee for off-duty conduct – in this case, driving under the influence in the employer’s truck. Only when such conduct can be shown to prejudice the local government’s reputation or interests is dismissal justified. The challenge remains in determining whether a particular incident of misconduct crosses that threshold.

#### B: Factual Background

The plaintiff, Mr. Klonteig, was an Assistant Fire Chief for the District of West Kelowna. By all accounts, he was an exemplary employee with a bright future with the District’s Fire Department. He had the respect of his co-workers, including his superiors and the unionized firefighters with whom he interacted in the context of labour negotiations and human relations.

Mr. Klonteig was a 5-year veteran of the District’s Fire Department in October 2013 when the incident that ended his employment occurred. Mr. Klonteig had been out with his spouse in Kelowna one evening. On his way home in the early morning hours, he was pulled over and failed a breathalyzer test twice. He was handed a 90-day administrative driving prohibition. To make matters worse, he was driving a District-owned truck allocated to the Fire Chief (although unmarked), and the truck was impounded.

Mr. Klonteig advised his employer of the incident immediately, and expressed remorse for his actions.

While Mr. Klonteig’s direct superior and a human resources advisor preferred a lesser sanction, the District’s Chief Administrative Officer held the view that Mr. Klonteig’s conduct deserved immediate dismissal, citing concerns over the liability to which Mr. Klonteig had exposed the District, and public safety concerns. The human resources advisor urged the CAO to reconsider given Mr. Klonteig’s record and value to the District, to no avail.

## C: Decision

At trial, the District argued that Mr. Klonteig's conduct was incompatible with his duties as assistant fire chief, especially considering his responsibility for ensuring public safety, and that therefore the District had just cause to terminate his employment.

The Court held otherwise. The Court remarked that off-duty conduct may give rise to dismissal, but only where the conduct is likely to be prejudicial to the interests or reputation of the employer. In this case, the truck was unmarked, Mr. Klonteig was not representing the District, and the public was unaware of the driving suspension.

Furthermore, the Court remarked that the conduct was not of the same moral reprehensibility as other cases in which dismissal was justified (including child pornography in one case, and a dishonest tax scheme by a chartered accountant in another case).

Finally, the Court noted that it could not conclude that the public would lose confidence in Mr. Klonteig, considering that his fellow firefighters, whose role it is to attend accident scenes involving impaired drivers, had not lost confidence in him. On that point, 24 firefighters had signed a letter in support of Mr. Klonteig following his dismissal.

In these circumstances, the Court held that the District's interests and reputation were not prejudiced. In the result, the Court awarded damages to Mr. Klonteig equal to 5 months wages.

## D: Implications

This case serves a reminder of the risks of dismissing a well-regarded employee, in cases of a single instance of misconduct. While the District likely felt justified in dismissing Mr. Klonteig considering the misconduct in this case, ultimately the Court has the last word.

There are two other noteworthy aspects to this case.

First, Mr. Klonteig's employment contract limited the District's liability to give notice or pay severance, to a period of one month per year of service. In this case, the notice period equated to 5 months. Setting out the applicable notice period in the employment agreement eliminates the uncertainty that comes with asking a court to determine what would be a reasonable notice period in all the circumstances.

Second, the court was critical of the dismissal letter in this case, because it cited factors for dismissal that turned out to be false or at least misleading. For example, the dismissal letter remarked that Mr. Klonteig

was aware that he should not have been using the Fire Chief's truck for personal use. However, the court found that there was no evidence that Mr. Klonteig was aware that he should not have been using the truck for personal use, and there was no evidence of such a policy prohibiting personal use of District vehicles. Further, the letter remarked that it would be impossible for Mr. Klonteig to regain the respect of the members of the Fire Department. However, the evidence showed that they continued to support Mr. Klonteig. The message for employers is to ensure that the factors cited in support of dismissal are legitimate and supported.

**Please contact us should you wish to discuss the implications of this decision in more detail.**