

## Case In Point

### Is Drinking and Driving Cause for Dismissal?

**Date:** October 4, 2013

In some circumstances, yes.

In the recent decision of [Dziecielski v. Lighting Dimensions Inc.](#), the employee drove a company vehicle while intoxicated. He was returning to the workplace from a customer visit and a lunch where he drank four beers, when he was involved in a car accident which destroyed the vehicle and left him with a broken neck and life threatening injuries. Following the accident, the employee was charged with a number of criminal offences relating to drunk driving. The employee was 45 years old, had 23 years of service, a clean disciplinary record and held the position of Vice-President.

The trial judge stated that intoxication at work does not automatically justify termination. Rather, a contextual analysis of all the circumstances must be conducted to determine whether the penalty of dismissal is proportional to the misconduct and undermines the employment relationship. The contextual analysis will include the circumstances of the intoxication, the nature of the work in question, whether the conduct was prejudicial to the employer's business interest, whether the conduct was a breach of the employee's implied duty or an express condition of employment, whether there is actual harm to the employer and whether the misconduct merely reflects the employee's poor judgment or inadvertence. Here, despite the employee's long and unblemished employment record, the judge found that drunk driving on a public highway with the employer's vehicle was "potentially lethal conduct" and that "any reasonable person must have understood that this was very serious misconduct." The employee's conduct damaged the employer's property while in the course of employment and risked damage to the employer's reputation and goodwill in the industry. The employee's case was dismissed and he was ordered to pay \$28,898.83 to the employer for legal fees. The employee appealed the trial judge's decision and lost again at the [Court of Appeal](#) where he was ordered to pay a further \$11,469.51 in legal costs to the employer.

We have also seen adjudicators in recent years uphold dismissal for single isolated incidents of workplace violence and threats, which arguably represents a shift from older case law which took a more tolerant and permissive view of this type of behaviour. This current case reflects similar changes with regard to societal views towards driving while under the influence of drugs or alcohol. As the trial judge said: "Increasingly, drunk driving is considered now within society at large to be a very serious criminal offence which attracts significant minimum sentences."