

MDJ LAW – LEGAL UPDATE March 2010

We are all now well aware of s.103A Employment Relations Act, and of the resulting need for fairness and reasonableness in looking at whether a dismissal or other action was justifiable.

This article however highlights the greater care required to establish justification where allegations of serious misconduct are made against “professionals”.

Potential harm to career

In January this year, in Lewis v Howick College Board of Trustees, Chief Judge Colgan took the opportunity to remark about the employment of professional persons whose livelihoods are predicated on occupational licensing requirements, and the attendant special care to be taken by employers in this regard.

The Lewis case considered the potential consequences for a teacher whose registration could also be affected. His Honour noted that dismissals of such employees will often trigger an automatic investigation by their relevant registration body, in this case the Teacher Registration Council.

Allegations of serious misconduct, said the Chief Judge, potentially result in double jeopardy for the professional employee - endangering their employment, as well as prospects within their chosen field for the rest of their working lives.

As a result, His Honour held that the employer’s responsibility in seeking to justify a dismissal in such cases, is especially onerous and that the Court examining such decisions must exercise “great care”.

Conclusion

These types of issues will also arise in other areas where there are professional registration bodies, such as the health sector. The importance of seeking timely independent professional advice was stressed by the Chief Judge in this case, and we suggest that this advice extends to any situation where a person’s ability to earn a living may be placed at risk through an investigation process.

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Tina has recently joined the firm and also has a medico legal background.

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