# McCarthy v. Bison Transport: Ontario court upholds just cause dismissal

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In *McCarthy v. Bison Transport Inc*., 2026 ONSC 3729, the Ontario Superior Court of Justice upheld a termination for just cause arising from an employee's second failed drug test. The decision highlights the importance of clear workplace policies, consistent enforcement, and the limits of the duty to accommodate in the absence of an actual or perceived substance-dependency disability.

## Key takeaways for employers on just cause dismissal

*McCarthy v. Bison Transport Inc.* confirms that employers in safety sensitive industries may rely on breaches of drug and alcohol policies as grounds for just cause termination, provided those policies are clearly communicated to employees, consistently enforced and impose consequences proportionate to the breach.

- Employers may rely on a positive drug test to support termination where an employee knowingly violates a valid workplace policy.
- The duty to accommodate does not apply where there is no actual or perceived substance-dependency disability.
- Where an employee has, or is perceived to have, a substance-dependency disability, employers must accommodate to the point of undue hardship.
- Clear documentation, signed acknowledgements and prior warnings can help employers show employees understood the policy and the consequences of breaching it.
- Good faith, transparent termination processes can help reduce the risk of aggravated and punitive damages.

## Background: failed drug tests and workplace policy enforcement

Mr. McCarthy worked for Bison Transport, a federally regulated employer, for four years as a long-haul driver. When he was hired, Mr. McCarthy attended mandatory training and signed an acknowledgement confirming his understanding that violations of Bison Transport's Drug and Alcohol Policy (the Policy) could result in disciplinary action, including termination.

In November 2014, Mr. McCarthy failed a random drug test administered in accordance with Bison Transport's Drug and Alcohol Testing Procedures. Bison Transport placed Mr. McCarthy on an unpaid leave of absence and required him to complete a return-to-work program, including educational programming and testing requirements. Later that month, Mr. McCarthy returned to work, undergoing further random drug testing, which he passed. Following his return to work, Mr. McCarthy signed a written warning expressly advising that any future failed drug or alcohol tests could result in his immediate termination.

In October 2017, Mr. McCarthy failed a second drug test. During a subsequent meeting, he again acknowledged the Policy and his understanding that a second violation could lead to his termination. Bison Transport terminated his employment for cause with immediate effect.

Mr. McCarthy commenced a wrongful dismissal action. The Ontario Superior Court of Justice dismissed his claim, holding that his termination was justified under the Policy, which was found to be a reasonable one for employees in safety sensitive positions.

# The Ontario Superior Court of Justice's reasoning: policy clarity, good faith and evidentiary proof

## A clear and consistently enforced workplace policy can support termination for just cause

Bison Transport argued that it had just cause to terminate Mr. McCarthy's employment after he violated its Policy by failing a second drug test while employed in a safety sensitive position.

The Court agreed. In its decision, the Court reaffirmed that an employer relying on a breach of a corporate policy as grounds for termination must prove that the policy was well-known to the employee, that it was consistently enforced, and that it imposed consequences proportionate to the implications of the breach.

The evidence showed that the Policy had been clearly communicated to and understood by Mr. McCarthy and that it was consistently enforced by Bison Transport. The Court also noted that Mr. McCarthy had acknowledged, following his first failed drug test in 2014, that a second failed test could result in his immediate termination. Further, the Court found that the Policy itself was reasonable given the safety sensitive nature of Mr. McCarthy's position.

Finally, the Court found no evidence that Mr. McCarthy had, or was perceived to have, a substance addiction or dependency issue that would have triggered Bison Transport's duty to accommodate. The Court concluded that, given the "uncontradicted evidence" that Mr. McCarthy neither suffered from nor was perceived to suffer from a drug-related disability, Bison Transport had no obligation to accommodate him and was justified in terminating his employment for cause following his second failed drug test.

## Honest and transparent termination processes can limit an employer's damages exposure

Mr. McCarthy sought damages for breach of contract and breach of the *Canadian Human Rights Act*, as well as aggravated and punitive damages.

Having found that Mr. McCarthy was not wrongfully dismissed, the Court briefly considered the damages that would have been awarded had his claim succeeded. In doing so, it rejected his claim for damages under the *Canadian Human Rights Act*, emphasizing that there was no evidence that he suffered from a disability or was perceived to have one.

The Court also dismissed Mr. McCarthy's claims for aggravated and punitive damages, finding no evidence to support the allegation that Bison Transport engaged in unfair, bad-faith or otherwise deliberate unlawful behaviour during his termination. In contrast, Bison Transport was found to have acted honestly and transparently throughout the process, motivated by legitimate public safety concerns. The Court concluded that, even if Mr. McCarthy had been wrongfully dismissed, Bison Transport's conduct during the termination process did not warrant an award of aggravated or punitive damages.

## What *McCarthy v. Bison Transport Inc.* means for Ontario employers

- Employers in safety sensitive industries may rely on workplace policies, including drug and alcohol policies, to justify termination for just cause. To do so, however, employers must ensure their policies are clear, well-communicated to employees, consistently enforced, and proportionate to the breach.
- Employers should maintain complete and accurate records of policy documents, employee training, signed acknowledgements, warnings, testing results, and other documentation showing that employees understand applicable policies, procedures and consequences.
- Random drug and alcohol testing may be permissible in safety sensitive workplace environments, particularly where the testing is connected to legitimate safety concerns and implemented through a reasonable workplace policy.
- If human rights issues are engaged (for example, in the drug and alcohol context if the employee has or is perceived to have a drug or alcohol dependency), employers must remain mindful of the duty to accommodate to the point of undue hardship. On the other hand, recreational drug use alone, without a dependency, does not trigger an employer's duty to accommodate.
- Employers can reduce the risk of aggravated and punitive damages by handling disciplinary and termination decisions honestly, transparently and in good faith.

## BLG's Labour and Employment group can help

If you have questions about just cause dismissal or any other labour and employment matter, BLG's Labour & Employment Group provides strategic advice to employers across Canada. Reach out to the authors or key contacts for guidance tailored to your organization.

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