

# Case Law Review:

## Workplace Communication

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### Communication

#### 7-38-55 RULE OF COMMUNICATION



**7%**  
**SPOKEN**  
**WORDS**



**38%**  
**VOICE**  
**TONE**



**55%**  
**BODY**  
**LANGUAGE**

Communication is more complex than you think.

Factors that influence:

- Culture and background
- Beliefs and values
- Emotional state
- Listening skills / barriers
- Power Dynamics
- Perception and Interpretation

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**Case #1:****Upheld Termination for Outburst**

Thomas v Saskatchewan Indian Gaming Authority Inc (2021)



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**Case #1: Upheld Termination for Outburst**

Thomas v Saskatchewan Indian Gaming Authority Inc (2021)

Ian Thomas was an employee at the Saskatchewan Indian Gaming Authority for 8 years as a Procurement Process Support Officer.

- In the late Summer of 2018, Mr. Thomas applied for a promotion to management within the Procurement Department and was one of three short-listed candidates for the role.

On October 10, 2018, Mr. Thomas met with the Director of Procurement to discuss training opportunities and to ask whether a decision had been made about the position he applied for.

The Director informed Mr. Thomas that the position had been awarded to another candidate, who was a woman.

- Upon being informed of this, Mr. Thomas became angry and aggressive.

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## **Case #1: Upheld Termination for Outburst**

### **Thomas v Saskatchewan Indian Gaming Authority Inc (2021)**

Mr. Thomas then accused the Director of being a racist who did not support the advancement of Indigenous men.

- Mr. Thomas said words to the effect that he would have had a better chance of being promoted if he had “cut his own balls off”.

The Director called for a supervisor to attend the meeting.

- Mr. Thomas continued his aggressive actions and tone after the supervisor entered.
- Mr. Thomas leaned in towards the Director, shook his finger at him, stating the explanations provided for awarding the position to the other candidate were “bullshit”.

The Director stated they were quite shaken up to the point of driving around aimlessly after work, fearing that Mr. Thomas may come to his home.

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## **Case #1: Upheld Termination for Outburst**

### **Thomas v Saskatchewan Indian Gaming Authority Inc (2021)**

The Director filed a complaint with SIGA's Employee Relations Department.

- Mr. Thomas was placed on leave and instructed by SIGA not to communicate with other employees pending the conclusion of the investigation. On his way out of the building, Mr. Thomas encountered two other SIGA employees.
  - He told them that he had been placed on leave and it was because he had “told [Mr. Hryniuk] how he really felt”.
  - Mr. Thomas also contacted another SIGA employee the next day, referencing the investigation and asked the other employee to download certain SIGA tender templates and e-mail them to him.

Mr. Thomas was terminated for cause in the following days, citing policy breaches and for “harassment and insubordination towards a supervisor.”

Mr. Thomas appealed this decision, citing it was insolence and not insubordination, which is not as bad.

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## **Case #1: Appeal Decision**

### **Thomas v Saskatchewan Indian Gaming Authority Inc (2021)**

The Court of Appeals concluded that it was indeed insolvency that was the matter at issue in this case. However, the court also noted that a single incident of insolvency may also constitute just cause in the right case, provided there is reasonableness.

The judge found that Mr. Thomas' conduct was of such a nature that:

- the "employer-employee relationship could not continue" because it "had been irretrievably severed".
- Mr. Thomas' actions had "destroyed both that fundamental trust and the capacity to work together" that was pivotal to the employment relationship, and
- it was "not realistic or reasonable to think that any other person in a supervisory or management role with SIGA could" work with him.

Accordingly, the trial judge concluded that Mr. Thomas' misconduct "struck at the heart of the employment relationship"

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## **Case #2: Supreme Court**

### **Termination Upheld for Offensive Language and Mistreatment**

Neen v. Cobble Hill Grocery Ltd  
(2006)

Cobble Hill, BC



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## Case #2 Neen v. Cobble Hill Grocery Ltd (2006)

A Grocery Store in Cobble Hill, BC was experiencing low staff morale and higher turnover among staff.

- The Store was small and consisted of mostly teenagers and young adults in the departments.

One of the Co-assistant Managers, Mr. Neen, decided to investigate possible sources of these morale and turnover problems by distributing a broad-ranging work environment questionnaire.

- The results of the questionnaire revealed that Mr. Neen's managerial style was one of the causes for poor morale among many of the staff, particularly the junior employees.

After the results were shared, the store's personnel development manager, Ms. Turner, met with several staff to inquire into the concerns.

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## Case #2 Neen v. Cobble Hill Grocery Ltd (2006)

Ms. Turner determined that Mr. Neen was not treating the employees with respect. It was revealed that Mr. Neen:

- Provided little, if any, positive feedback
- Spoke to them in a negative and belittling manner (often saying they could be replaced);
- Yelled, used vulgar language directed at them (ex/ "move your fucking ass");
- Fraternized, or attempted to fraternize, with some of the female employees (ex/ asking them out for a drink, etc.);
- Adjusted employees' schedules, contending that he was doing it because they had not been doing a good job; and
- Made inappropriate remarks about the anatomy of some of the female employees.

It was also alleged that he undermined the authority of other members of management by making derogatory comments about them to other employees.

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## Case #2 Neen v. Cobble Hill Grocery Ltd (2006)

In December 2002, Mr. Neen was advised of portions of the complaint regarding his treatment of staff and undermining of management.

- He denied all allegations and requested names and specifics of the complaint.

Ms. Turner advised Mr. Neen that he had breached the store's Harassment Policy and if additional information was provided, an investigation would need to be initiated which could potentially result in his termination.

- The store asked him to take a management course and specified that if he treated employees poorly again, he might be fired.
- April 2003, Mr. Neen completed the course and received a subsequent positive performance evaluation.

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## Case #2 Neen v. Cobble Hill Grocery Ltd (2006)

April 2004, one year after the course was completed, an employee quit citing Mr. Neen's treatment of him and other employees.

- The employee provided a letter which described the same types of actions being committed by Mr. Neen as well as a racial slur.
- Mr. Neen was fired later that month for just cause.

The Courts upheld this decision despite denial and conflicting stories provided from Mr. Neen. Mr. Neen claimed he wasn't made aware of the complaint and certain procedural steps were not followed according to the store's Harassment Policy.

- However, the store's careful documentation of its warnings and attempts to help Mr. Neen improve his managerial style showed he was well aware of the situation and given a chance to save his employment.

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# Thank you

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