

Done like dinner

Ten sure signs you're going to be fired and what to do about them, from one of Canada's top employment lawyers

By Brian A. Grosman • Interview by Allan Reznik

1. The Party Is Not Over
 Suddenly you are not invited to meetings you normally receive, or invited to meetings you usually attend.

Write a memo to your boss, pointing out that the memos and meetings are important in the function of your job. If you suspect your boss is trying to corner you in some way, send a copy of the memo to his or her superior—as long as you feel certain this will not constitute insubordination. The memo must be positive in nature, nothing adversarial or argumentative. Mention that you want to continue to do a first-class job for the corporation, but in order to do so you must be fully informed.

The memo will bring the matter to a head. If you're being eased out, the response will communicate the message more clearly. At least you won't be left in doubt.

2. The Party Is Over
 You have been invited to a party, but you are not invited to the party.

This is a familiar scenario when a merger or takeover is on the horizon. The restructuring may or may not

have an impact on your position. Don't do anything that will take you from the continuing-on list to the downsizing list. Approach your superior with your concerns and ask if he/she is at liberty to provide you with information or reassurance. What is said—more important, what is not said—will give you a clear reading of the situation.

If you're a CEO, go to a member of the board of directors who has been a consistent supporter. Don't go with a mewling poor-me attitude. Say you feel uncomfortable and ask forthrightly if there is any reason you should. Again, listen both to what is said and what is not said. If the response is, "Jim, I wish I could help, but I'm not in a position to say," that's as clear a message as you can get. It means you're finished. Don't become emotional and risk triggering an extreme reaction. You don't want to jeopardize your position or—if it's already in jeopardy—the substantial severance that could be coming to you.

3. The Siberia Treatment
 You're summoned to a private office and then escorted out without any explanation.

The Siberia Treatment is often an attempt to frustrate you into resigning. If you walk, you let the company off the hook. If management has to ask for your resignation or simply fires

you, a compensation package would be in order.

Express your shock and surprise to your supervisor, verbally and in writing. Say you believe your "promotion" constitutes a fundamental change in your employment, and while you are unhappy about the situation, you are prepared to carry on. Don't back off; keep up the pressure without being insubordinate or saying you won't do your job. Your legal rights are minimal, but your actions tell the company you won't give them grounds to fire you. The question is: how long will they be prepared to tolerate such a situation?

4. Who's Johnny?
 Superior with whom you have enjoyed a good relationship are no longer available for lunch.

It's not that they don't want to eat with you, but that you're no longer a key player. Their actions reflect the office attitude about you. It's time for a heart-to-heart.

Approach your superior calmly and say something like, "It appears that you're not comfortable with my situation. As a result, neither am I. Perhaps you can let me know what's happening so that we can deal with it in the kind of businesslike way I know you'd want to handle it." Always take a positive attitude. Project to your boss the kind

of values you wish he or she had, but probably hasn't.

5. The Mover Out

The company is being sold. You receive a letter that on completion of the sale all employment will be terminated, but it is expected the purchaser will rehire.

Read the letter with great care. If it clearly states that all employment will be terminated when the sale is completed, you're not going to be "grandfathered"—in other words, you can't rely on your long-term service to get you a good severance package.

The key phrase, "it is expected the purchaser will rehire," means you can rely on nothing. Situations will be dealt with on a case-by-case basis and you should get legal advice; if you do nothing, you may unknowingly be acquiescing in the termination of your employment. The purchaser could let you go within months, with nothing more than minimum compensation.

6. Dollar Sign

Your employer tells you times are tough so you won't be receiving your normal bonus and your salary will be frozen. You learn that others have not been given this news.

Your employer is hoping for a cheap resignation, and you may need legal advice. Until recently this scenario might have been the first sign of "constructive dismissal," a fundamental altering of the employment relationship to your serious disadvantage. But constructive-dismissal cases have changed dramatically over the last 18 months. Employers now have wider discretionary powers to reallocate responsibilities among employees, and unless your changed responsibilities affect your compensation substantially, the argument that you are being constructively dismissed may not carry much weight. Each case is judged on its own merit, so consult a lawyer with expertise in this area. Take the posi-

tion that your employer has brought about a fundamental change in your working relationship and you want an explanation, oral or in writing.

The company is being sold. You receive a letter that on completion of the sale all employment will be terminated, but it is expected the purchaser will rehire.

This is common during corporate shake-ups, when management honestly doesn't know what to do with you, a fine and capable senior employee whose position has simply become redundant. The company hopes you'll remain in a holding pattern until an appropriate niche is found for you. Unfortunately, you're dealt out of the mainstream for perhaps 18 months, losing valuable contacts. You may become so frustrated that the company ends up with a cheap resignation.

Send a memo asking basic questions: why am I on special assignment? What is the nature of these assignments? How do they relate, if at all, to my responsibilities as, say, v-p of finance? Your action will oblige your superior to respond, since it will quickly become clear there is a potential constructive-dismissal case here. Often, the higher the executive's profile, the greater the company's motivation to reach an amicable settlement so competitors and the business press don't get wind of the news.

8. A Tighter Reins

Your office manager is a "strong arm" boss to the extreme and your relationship will begin showing a real strain with no relief.

This is a clear signal you're on the way out. The only question is: will it be at your cost, or the company's? You must broach the subject with your superior, in person or by memo. Acknowledge what's happening, then say you know your superior wouldn't want you to be demeaned in the process—that's not his style. Say, "I'm feeling very uncomfortable and losing a lot of sleep over

this, so why don't we resolve it in a businesslike way?" Don't use phrases like, "I want a severance package," "I want to leave" or "I want to resign." Such statements can be interpreted as a voluntary resignation and result in the employer being liable for nothing.

9. Paper Trail I

Write and receive a memo critical of your performance.

Your employer is attempting to lay a paper trail, to set you up for "termination for justifiable cause." The company's position is that because your performance has been inadequate, or you have engaged in misconduct or insubordination, and because you have been warned in writing of your deteriorating performance, you can be terminated without notice and compensation. (Few people realize they can be fired with or without a good reason, as long as the employer lives up to the requirements of the law and pays the compensation to which they are entitled.) Respond aggressively, refuting the allegations in some detail. Respond promptly but, given the gravity of the situation, it's wise to confer with an employment lawyer first.

10. Paper Trail II

You receive memos from your superior condemning wrongdoing and overreactions, a process to which you were not previously subjected.

An adversarial situation looms large. Again, respond aggressively, indicating in a memo that this is a process to which you were not previously subjected. Why the change? Respond to every memo, addressing each point individually; no allegation can be overlooked if you are to successfully block this attempt to paper you with termination for justifiable cause. [V]

Brian A. Grosman is a Toronto employment lawyer and author of *The Executive Firing Line: Wrongful Dismissal and the Law* (Carswell/Methuen, 1982), *Corporate Loyalty: A Trust Betrayed* (Viking, 1988) and *Fire Power* (Penguin, 1984, revised 1989).