The theory of contractual repudiation does not apply to employment contracts

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Can an employee's insubordination amount to repudiation of his employment contract, thus providing his employer with just and sufficient cause to dismiss him? In a judgment rendered on September 20, 2013, the Québec Court of Appeal answered this question in the negative.[1]

The plaintiff, Pilgrim, filed a complaint pursuant to section 124 of the *Act Respecting Labour Standards* against his former employer alleging that he had been dismissed without just and sufficient cause. The employer, Pattison Sign Group ("*Pattison*"), was of the opinion that Pilgrim repudiated his employment contract. More specifically, Pattison took the position that the plaintiff's behaviour was such that it was left with no choice but to conclude that the employment contract was terminated.

The Labour Relations Board agreed with Pattison and came to the conclusion that, where an employee adopts a hostile attitude to the point of forcing his employer to dismiss him, there is repudiation of the employment contract.

However, the Québec Court of Appeal concluded that the theory of contractual repudiation as a result of the actions of one party cannot be accepted in employment law insofar as the end of the employment contract would thus be based on the tacit will of the employee. The application of such a theory would have the effect of reversing the burden of proof and forcing the employee to demonstrate that he did not repudiate his contract. The Court also indicated that the application of the theory of contractual repudiation to the employment contract would run contrary to article 2094 of the *Civil Code of Québec* which requires that the employer must demonstrate that he dismissed the employee for a serious reason.

To access the Court of Appeal's decision, click here.

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[1] *Pattison Sign Group* v. *Pilgrim*, 2013 QCCA 1610.

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