CITATION: Silva v. Royal Bank of Canada, 2026 ONSC 3841
NEWMARKET COURT FILE NO.: CV-18-00137413-0000
DATE: 20260630

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
RAVINI SILVA	
Plaintiff	Kimberly Boara Alexander, for the Plaintiff
– and –	
ROYAL BANK OF CANADA and ROYAL MUTUAL FUNDS INC.	
Defendants	Tate McLeod, Jessica Warwick, for the Defendants
	HEARD: January 1-10, 13-17, 20, 22-24, 27-31, 2025, February 3, 2025, May 2, 2025, May 15, 2025, and October 9, 2025

REASONS FOR DECISION

CASULLO J.

OVERVIEW

[1] Ravini Silva was dismissed for cause from the Royal Bank of Canada ("RBC") in April 2018. She claims damages for wrongful dismissal, breach of contract, defamation, breach of fiduciary duty, negligence, aggravated, exemplary and punitive damages.

[2] Ms. Silva was a 47-year old financial planner at the time of her dismissal. She earned a base salary of $62,500 plus commissions. She was also eligible to participate in RBC's bonus plans, group benefits plan, and pension plan. Ms. Silva is currently 55 years old.

[3] In addition to monetary damages, Ms. Silva seeks an order that the defendants correct the Form 33-109FI Notice of Termination Information for An Individual ("NOT"), as filed with the National Registration Database.

[4] The defendants claim that Ms. Silva was dismissed for cause on the grounds that she (a) forwarded confidential client and Bank information to her personal email account, thereby

exposing RBC and its clients to risk; (b) processed withdrawal transactions for clients without meeting them in person, and prior to obtaining evidence of the client authorization; and (c) advised clients to backdate trade documents so the signature dates would match the trade dates.

[5] These actions were in breach of RBC's Code of Conduct and operating procedures, Royal Mutual Funds Inc.'s ("RMFI") polices and procedures, and the Mutual Fund Dealers Association of Canada's ("MFDA") By-Laws, Rules and/or Policies, thereby damaging the trust necessary to maintain a viable employment relationship.

[6] In the alternative, should the court find that Ms. Silva was wrongfully dismissed, the defendants submit that the damages claimed are excessive, remote, and not recoverable at law and, further, that Ms. Silva has failed to mitigate same.

[7] For the following reasons, I have concluded that the evidence fails to demonstrate that Ms. Silva's conduct supports cause for her dismissal.

TRIAL PROCESS[1]

[8] Counsel for both parties conducted themselves in an exemplary manner throughout this lengthy trial. To assist the court, nine volumes of joint books of documents were submitted, along with written agreement as to the use each document could be put. A further 66 numbered documents were made exhibits throughout the trial, as well as 19 lettered exhibits.

[9] Counsel helpfully provided written submissions to supplement their opening and closing submissions, and I freely acknowledge culling certain portions thereof for use in these reasons.

[10] Given the confidential nature of the evidence, documents were dealt with in accordance with the Sealing Order of Justice Bird dated September 17, 2019. Beyond the pleadings and the trial record, no documents were uploaded to Case Centre; instead, bench copies of all documents were handed up to the court. The Registrar was provided with a USB stick of some documents, and hard copies of others. Throughout the trial, counsel and the witnesses used best efforts to refer to RBC's clients using their first and last initial instead of full names.

[11] On the first day of trial, and on consent, the plaintiff was granted leave to increase the damages claimed from $3,000,000 to $3,500,000.

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[1] A brief explanation as to the timeliness of my reasons. At the December 20, 2024 trial management conference, counsel confirmed a trial estimate of 21 days. Impressively, they were able to adhere to this estimate, but closing submissions required an additional three days. Unfortunately, my schedule in 2025 was such that closing submissions could not be completed until October 2025. Further, and again due to my schedule, Regional Senior Justice Leibovich granted my requests for an extension to the generally accepted convention that judgments are to be rendered within six months of hearing a case.

[12] Over the course of the trial, I made a number of mid-trial rulings, including the plaintiff's mid-trial motion for production, which I granted orally.

[13] A total of 26 witnesses gave evidence, 11 for Ms. Silva, and 16 for RBC, comprised of lay witnesses, RBC employees, and experts. In this documentary and testimonial-heavy action, I will reference only the documents and testimony I believe necessary to arriving at a decision.

ISSUES

[14] The issues for me to determine related to Ms. Silva's wrongful dismissal claim are:

a. Whether RBC has proven its allegations of just cause for termination.

b. If so, whether Ms. Silva's conduct was sufficiently serious to amount to cause.

c. If not, what is an appropriate award of damages.

d. In addition to monetary damages, should the defendants correct the NOT?

[15] Additionally, has Ms. Silva made out her related claims for defamation, negligence, breach of fiduciary duty and breach of contract? If yes, what is an appropriate award of damages?

EVIDENCE

[16] Before immigrating to Canada in 2004, Ms. Silva was employed by Hatton National Bank, the largest commercial bank in Sri Lanka. She worked her way up from a junior administrative role to management, and became an associate of the Institute of Bankers of Sri Lanka, signifying a higher designation in the industry.

[17] After arriving in Canada, Ms. Silva resumed her banking career with TD Bank. She continued to upgrade her credentials, completing the mutual fund licencing exams within six months, and subsequently obtaining her personal financial planner qualification. TD eventually elevated Ms. Silva to the role of branch advisor.

[18] In November 2006, RBC hired Ms. Silva as a senior account manager. As a term of her employment, Ms. Silva was obligated to familiarize herself with RBC's Code of Conduct which set out the terms and conditions of her employment, including those pertaining to integrity, complying with instructions, policies, procedures and standards, and managing the protection of client information.

[19] Similarly, Ms. Silva was obligated to familiarize herself with both RBC's and RMFI's operating policies and procedures, and to conduct herself in a manner consistent with said operating policies and procedures.

[20] In January 2007, RBC sponsored Ms. Silva's licence to sell mutual funds. In 2010, Ms. Silva was promoted to position of financial planner. Financial planners are required to be

registered with the Ontario Securities Commission ("OSC"), and are subject to the authority and regulation of the MFDA.[2]

[21] Although employed by RBC, Ms. Silva's activities as a financial planner were carried out under the banner of RMFI. RBC held Ms. Silva out as being a part of both RBC and RMFI. Her registration with MFDA and OSC was sponsored by and through RMFI.

[22] As an MFDA member, it was Ms. Silva's responsibility the to ensure that her conduct complied with her obligations as set out in MFDA's By-laws, Rules and Polices.

[23] Ms. Silva enjoyed great success as a financial planner. She performed at an extremely high level and developed a strong book of business with a loyal and profitable client base. She consistently received positive performance reviews from management.

[24] In October of 2015 and 2016, Ms. Silva ranked first in the Greater Toronto Area and placed third nationally, receiving RBC's Convention Winner Award for exceptional results. She was recognized with an all-expenses-paid cruise, which Ms. Silva took in January 2017.

Relationships Under Strain

[25] While Ms. Silva's impugned conduct is the immediate subject matter of these proceedings, a full appreciation of the circumstances requires consideration of what I'll term the progressive breakdown in relations between the plaintiff and management.

[26] This breakdown transpired after Ms. Silva transferred to the Richmond Hill branch from the Ajax branch in mid-2016. Prior to the transfer, Ms. Silva had successfully serviced clients in both locations, and others, travelling to branches as necessary. She was permitted to expense mileage and Highway 407 ETR charges.

[27] Ms. Silva testified that in 2014, she and her then-manager, Mila Starodoub, began to discuss Ms. Silva transitioning from Ajax to Richmond Hill, closer to where Ms. Silva lived. RBC believed there was opportunity for her to grow her portfolio in Richmond Hill. They discussed a plan that would see Ms. Silva move Ajax clients off her desk over time, allowing her to focus on existing, local clients, and cultivate new clients in a new market, all without the need to travel as frequently. When an Ajax client was "offboarded", a client from Richmond Hill would be "onboarded."

[28] This was also a time of change for RBC. Where once there had been a single manager for both the Richmond Hill and Ajax markets, a market realignment around the same time period meant that each of these branches would now have a different manager.

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[2] At all times relevant to this action the Mutual Fund Dealers Association of Canada ("MFDA") oversaw and regulated the mutual fund industry in Canada. In January 2023, the MFDA and another entity (IIROC) amalgamated into the Canadian Investment Regulatory Organization ("CIRO"). To avoid confusion, I will simply reference MFDA as the governing body.

[29] The transition was seen as a win-win. Until it was not.

[30] Ms. Silva reported to a new financial planner manager in Richmond Hill, Alex Agardi. Mr. Agardi in turn reported to Maria Bosnjak, regional vice president for financial planning ("RVP"). Prior to Ms. Bosnjak assuming her position in the fall of 2016, there was a transition period where Stella Homen (at the time Stella Partipilo) was RVP.

[31] The plan of transition from Ajax to Richmond Hill was never reduced to writing and signed, which would have signalled agreement among the interested parties. When she was asked to start offboarding her Ajax clients, Ms. Silva was resistant. Many were high net worth, and Ms. Silva believed the replacement clients from Richmond Hill did not represent the same value. Further, it was Ms. Silva's understanding that other financial planners were permitted to service clients in different locations.

[32] What ensued was a growing frustration on management's part over Ms. Silva's reticence. Mr. Agardi, Ms. Bosnjak, and Ms. Homen testified to holding meeting after meeting with Ms. Silva, with management walking away believing a transition plan had been agreed to, and Ms. Silva thereafter expressing continued confusion.

[33] RBC believed Ms. Silva was being defiant, disrespectful, and insubordinate.

[34] During this same period her mother in Sri Lanka became ill and was hospitalized, which was distressful to Ms. Silva.

[35] Ms. Silva was getting mixed signals from management.

[36] Ms. Silva testified that when the book of business in Richmond Hill turned out to be less robust than anticipated, Ms. Starodoub gave her permission to keep her Ajax clients. Ms. Bosnjak testified that any such conversation did not happen with her knowledge.

[37] Further, once Ms. Silva agreed to begin the transition process in October of 2016, she was given a timeline of 12-18 months to effect the changes. Ms. Silva was asked to give her clients advance notice of the changes.

[38] On December 20, 2016, Mr. Agardi's instructions abruptly shifted from breaking clients in slowly to an order that she immediately stop telling Ajax clients about the transition. She was to conduct business as if nothing was changing. The change in direction arose following a client complaint, who had heard about the transition from Ms. Silva.

[39] As of December 20, 2016, management would take the reigns in terms of notifying clients about the transition.

[40] Management indeed did so. Abruptly and without advance notice to Ms. Silva, almost 65 of her clients were transitioned to a new financial planner. In some instances, clients were not informed of the change – the name of the financial planner was simply changed on their profile.

[41] Mr. Agardi sent Ms. Silva an email advising of the transition on January 11, 2017, while she was away on the convention award cruise and unable to access email. This email also instructed Ms. Silva to reinforce the change in a positive fashion should her former clients reach out to her.

[42] However, RBC's transition implementation backfired. Ms. Silva's clients were fiercely loyal to her, and refused to work with a new planner. One client left RBC entirely[3]. Ultimately, approximately 50 clients were transitioned back to Ms. Silva's book of business.

[43] This was no doubt a blow and a loss of face to the management team. Indeed, Ms. Bosnjak testified that this was the first time in her long career with RBC that there was such pushback from customers over a transition.

[44] Tension escalated between Ms. Silva and management. Mr. Agardi testified that he felt caught between Ms. Silva and Ms. Bosnjak to such a degree that he was worried about losing his job. On June 2, 2017, he reported to HR that he was worried Ms. Silva's behavioural issues were negatively impacting his "brand" at the bank.

[45] Ms. Silva testified that around this time Mr. Agardi was encouraging her to look for other positions, which she perceived as an effort to push her out.

[46] As the Ajax clients were returned to her, Ms. Silva found her ability to service them restricted. Mileage to Ajax was limited to two visits per month; anything beyond that would be at Ms. Silva's personal expense. The 407 ETR privileges were revoked. Ms. Silva raised concerns about these restrictions and changes in an email to Mr. Agardi on June 13, 2017. There is no email evidence to suggest Ms. Silva's concerns were addressed.

[47] In late summer of 2017, Mabel Lee replaced Mr. Agardi as Ms. Silva's direct manager. On November 1, 2017, Tammy Papaevangelou became Ms. Silva's direct manager. Ms. Lee remained involved in the background.

Other Interrelated Occurrences

[48] It is instructive at this juncture to address collateral matters that were unfolding during the same period.

[49] RBC had an internal tool known as the price exception and approval tool ("PEAT"), through which planners could request discounted rates or pricing exceptions for their clients. These rates were approved by the national office. Before a planner can ask the national office for approval, however, the planner must first obtain their manager's approval. On a number of occasions throughout August and September, 2016, Ms. Silva failed to obtain management's approval.

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[3] RBC refused to make any compensation adjustment to Ms. Silva for this client loss.

[50] RBC implemented an escalation process that allowed financial planners to address compensation concerns. As noted at the outset, Ms. Silva earned bonuses on top of her base salary, typically through selling banking products, referrals within the corporation, and so forth.

[51] Ms. Silva referred a mortgage concerning client KS and anticipated being compensated for the referral. In October 2017, Ms. Lee advised she would not support Ms. Silva's compensation based on the record. Ms. Silva submitted a compensation escalation. Ms. Lee once again advised she would not support the compensation. On November 8, 2017, Ms. Silva was advised a third time that the escalation would not be supported by either Ms. Papaevangelou, Ms. Lee or Ms. Bosnjak.

[52] Ms. Silva continued to fight for the compensation she believed she was entitled to, and asked that the decision to decline be escalated further. This was not met with equanimity, despite RBC's policy that provides for increased levels of escalation when a financial planner questions their compensation. Ms. Silva testified that she had never encountered difficulties when asking for escalations with previous managers.

[53] The evidence produced at trial, including emails and viva voce evidence, indicate that over time, management became increasingly dissatisfied with Ms. Silva's conduct.

[54] And Ms. Silva was feeling increasingly targeted through this period. She testified to the negative physical impact the stress was having on her, and her feeling like she had to walk on eggshells. In response to these rising tensions, both sides, management and employee alike, sought guidance through employee relations.

Employee Relations – The Shadow Narrative

[55] Doug Berry was the employee relations advisor at RBC ("ERA"). In this human resources-type role, he provided oversight for managers encountering HR issues. His mandate was to help guide management with whatever issue they were experiencing, while ensuring that RBC processes and policies were followed.

[56] Mr. Agardi first reached out to Mr. Berry on October 28, 2016. In an email copied to Ms. Bosnjak, he outlined the challenges with Ms. Silva over the Ajax transition. The two had subsequent discussion over the phone, during which Mr. Berry suggested that a new plan be put in place to move the transition along.

[57] Mr. Agardi reached out to Mr. Berry again on November 23, 2016, to report increased changes in Ms. Silva's behaviours that, in his view, did not align with RBC's values. Mr. Agardi was seeking guidance on whether to send Ms. Silva a message by giving her a "Does Not Meet" ("DNM") rating on her upcoming fourth quarter review for 2016.

[58] DNM ratings can be accompanied by a reduction in compensation.

[59] Mr. Berry testified that he would have explained to Mr. Agardi that there were two aspects to a performance rating. The first is performance and meeting business goals. The second

is behaviours. If the two did not align, it was up to management to determine whether a DNM should be given.

[60] In December 2016, Mr. Berry provided guidance to Mr. Agardi concerning a customer complaint about the Ajax to Richmond Hill transition, based on what the customer told Mr. Agardi of what Ms. Silva said to him. Mr. Berry advised that Ms. Silva should be restricted from notifying clients about the transition. This prompted the December 20, 2016 email to Ms. Silva referenced above, to refrain from speaking to clients about the transition.

[61] In the fourth quarter of 2016, or 2016 Q4, Ms. Silva received a DNM rating for the first time in her ten years with RBC. In a meeting with management to discuss the rating, Ms. Silva was advised that the behaviours behind the decision to give her a DNM included numerous PEATs exercised directly to National Office outside of protocol; compensation escalations to the escalations department and senior management, contrary to the established escalation process; and her continuing efforts to force escalations when a senior management had advised the decision to deny her request was final.

[62] The DNM rating saw Ms. Silva's variable compensation reduced by 10 per cent.

[63] Ms. Silva provided a written response to this quarterly review to management, setting out her dissatisfaction.

[64] On January 22, 2017, Mr. Agardi again reached out to Mr. Berry, concerning a second complaint from a customer regarding the transition. Given the December mandate to abstain from speaking to clients about the issue, a decision was made to provide Ms. Silva with a written warning. Mr. Berry testified that he could not remember whether the idea was his or Mr. Agardi's.

[65] A formal warning, signed by Mr. Agardi, was hand delivered to Ms. Silva on February 8, 2017. Ms. Silva was told the warning was issued as a corrective action relating to RBC's Code of Conduct, specifically RBC's Culture of Integrity. Her infraction? Her discussion with a client about the transition, despite management's clear instructions not to. In the letter Mr. Agardi noted this was not the first time Ms. Silva had failed to follow management's instructions. Finally, Mr. Agardi found Ms. Silva's explanation was unreasonable.

[66] The February 8, 2017 warning letter was drafted by Mr. Berry, who testified that he was involved in the decision-making processes surrounding management's choices in dealing with Ms. Silva. However, despite Mr. Berry's consistent efforts to walk back his influence in the decisions made by management, under the cover of "I just provide options and make recommendations, management makes the ultimate decision", it was abundantly clear that every option and recommendation made by Mr. Berry was followed or implemented by management. In fact, Mr. Berry's involvement with Ms. Silva *vis-à-vis* management continued through to her dismissal.

[67] Ms. Silva drafted an eight page response to the warning letter to Mr. Agardi, copying both Ms. Bosnjak and Mr. Berry, setting out her version of what she discussed with the client in question.

[68] RBC employees are also provided assistance with workplace complaints or concerns, through the Employee Resolution Helpline. Ms. Silva contacted the helpline on April 26, 2017 to report her concerns over management's decision to deny compensation (for the loss of the client who withdrew her funds from RBC after the transition debacle). The intake clerk documented Ms. Silva's concerns, particularly that she had already escalated the compensation issue to management to no avail.

[69] Ms. Silva also reported feeling bullied. The intake clerk referred Ms. Silva to the Respectful Workplace policy for more clarification on policy.

[70] Ms. Silva's file was then assigned to, inexplicably, none other than Mr. Berry in ERA.

[71] Mr. Berry confirmed during cross-examination that the helpline is where employees look for help and seek advice. However, when asked whether he was assigned to help Ms. Silva, he clarified and said he was not there to help, but to guide. To paraphrase, he was not helping Ms. Silva as an advocate, but rather helping her as a guide, guiding her where to go next.

[72] Mr. Berry first connected with Ms. Silva on May 1, 2017. They discussed management's decision not to compensate Ms. Silva for the client who left RBC following the failed transition. Ms. Silva also expressed concern about the warning letter she received in February, 2017.

[73] It is unclear whether Ms. Silva made the connection that this was the same Mr. Berry she had copied on her written response to the warning letter. Mr. Berry said he would have told her he was well aware of the circumstances and situation, although this is not documented in his notes. Mr. Berry's notes indicate that he reminded Ms. Silva he was not an advocate, but offered to investigate options and get back to her.

[74] Mr. Berry held numerous meetings with Ms. Silva over the next few months, during which she continued to express dissatisfaction with management. By this point Ms. Silva had received DNMs for 2017 Q1 and 2017 Q2, to which she again provided a written response.

[75] On August 4, 2017, Ms. Silva reported to Mr. Berry that she was concerned her DNM ratings were retaliation for raising compensation escalations over the past months, and going to senior management over management's head. Mr. Berry assured her that RBC took retaliation complaints seriously, and that she should document specific examples of what she felt was retaliatory behaviour.

[76] Because the primary target of Ms. Silva's retaliation complaints was Ms. Bosnjak, Mr. Berry suggested Ms. Silva direct her concerns to RBC's Regional President, Kris Depencier.

[77] Ms. Silva reached out to Mr. Berry on September 1, 2017, after receiving another DNM for 2017 Q3, asking how to escalate her concerns. Mr. Berry reminded her that she should contact Ms. Depencier. Ms. Silva said she would. Ms. Silva also consented to Mr. Berry speaking to Ms. Depencier about her concerns.

[78] On September 1, 2017, Ms. Silva submitted two complaints in writing to Ms. Depencier, which Ms. Silva testified Mr. Berry assisted with. First, that her most recent 2017 Q3 DNM performance rating, as well as the three that had proceeded it (2016 Q4, 2017 Q1 and 2017 Q2), were unwarranted; and (b) her belief that the ratings were a direct result of her raising concerns with Mr. Agardi and Ms. Bosnjak, and then escalating those same concerns to more senior management. Her submission was concise and succinct, as Mr. Berry suggested.

[79] Management's notes accompanying Ms. Silva's quarterly performance reviews focused almost entirely on Ms. Silva's attitude, and her escalations over compensation. There were no allegations that Ms. Silva was failing to meet her performance goals – in fact, she was consistently meeting them.

[80] Ms. Depencier replied to Ms. Silva on September 18, 2017, advising she was satisfied the DNM ratings were appropriate. She asked Ms. Silva to provide Mr. Berry with specifics of the retaliation complaint. Before responding to Ms. Silva, Ms. Depencier ran a draft of her email by Mr. Berry for approval.

[81] Ms. Silva testified that she felt she was getting nowhere after receiving Ms. Depencier's response, so reached out to RBC's Ombudsman, who recommended she hire a lawyer.

[82] Ms. Silva retained employment lawyer Riaz Ahmed to assist her. On November 3, 2017, and in direct response to Ms. Depencier's request for specifics, Mr. Ahmed provided Mr. Berry with a detailed account of Ms. Silva's complaints of workplace harassment, unjust treatment, and retaliation. Mr. Ahmed provided specific examples, including relevant attachments. He also asked that that RBC locate and consider specific emails that Ms. Silva did not have access to, providing names, dates, and times of the emails.

[83] Ms. Bosnjak and Mr. Agardi featured prominently in Ms. Silva's retaliation complaint.

[84] On February 8, 2018, Mr. Berry responded as follows:

> Thank you for your message. We have looked into the concerns raised in your letter dated November 3, 2017 and based on the information provided, we find that the allegations being made against RBC, including allegations of retaliation against Ravini, as being unsupported. Further, it is worth noting that many of these concerns were previously raised by Ravini and a detailed response has previously been provided to her directly. As such, we consider this matter closed.

[85] When Mr. Ahmed asked for reasons supporting the dismissal of Ms. Silva's complaint, Mr. Berry's responded with the following:

> RBC takes these concerns very seriously and that is why we promptly looked into the concerns that had been raised by Ravini. A detailed response had been previously provided for each of her comments. I will not be repeating those responses at this time.

[86] RBC did not produce any evidence of this "detailed response" addressing each of Ms. Silva's concerns.

[87] Clearly there was a storm brewing between Ms. Silva and management. The failed transition of clients off Ms. Silva's book of business, in addition to her compensation escalations, culminated in a retaliation complaint against management, which is a significant allegation.

[88] The evidence presented at trial clearly documented the progression of tension and the tenor of Ms. Silva's working relationship with management.

[89] In the background was Mr. Berry, steering both sides of the conflict forward. He was tasked with receiving, managing, collecting information, and crafting RBC's response to Ms. Silva's formal complaint. Yet at the same time, he was tasked with investigating that same complaint on Ms. Silva's behalf.

[90] Ms. Silva was unaware that Mr. Berry had advised Mr. Agardi and Ms. Bosnjak on the events detailed in her complaint, or that during the period during which he was ostensibly investigating the complaint, he was coaching her managers on how to justify their actions.

[91] RBC's Code of Conduct underscores the seriousness with which allegations of retaliation are treated, offering employees a safe space to raise concerns. RBC investigates every claim of retaliation, including following up with employees who raise concerns, monitoring employment decisions made in relation to those who report misconduct, providing education and coaching to managers of employees who raise concerns, and taking disciplinary action to address retaliation.

[92] There is zero evidence before me to demonstrate that Mr. Berry took any meaningful steps to assess the concerns raised by Ms. Silva.

[93] Having thus grounded the true issue before me – whether Ms. Silva was wrongfully dismissed – in the context of events that proceeded it and eventually tracked alongside it, I turn now to the events culminating in Ms. Silva's dismissal.

The Tertipis Trades

[94] In early December 2017, Richard Jorge, manager of investment retirement planners in Richmond Hill, was conducting his daily compliance monitoring when he noticed that a trade processed by Fred Tertipis was for a client anchored to Ms. Silva. This stood out because investment retirement planners typically do not transact with clients who have a dedicated financial planner.

[95] Mr. Tertipis was in the branch that day. Mr. Jorge asked him whether Ms. Silva was aware he was transacting with her client. Mr. Tertipis said yes, and it was Ms. Silva who gave him the paperwork for the transactions. Mr. Tertipis explained that he was simply helping Ms. Silva out by processing paperwork.

[96] Mr. Jorge explained that financial planners and investment retirement planners work together in a rather symbiotic relationship. The investment retirement planner will bring the client on, who is then anchored to a financial planner going forward, leaving the investment retirement planner free to attract more clients.

[97] Ms. Silva was also at the branch that day. Mr. Jorge popped into her office to ask whether she was aware Mr. Tertipis was transacting with her client. She confirmed she was, and that she had asked him for help because she was not available the day the transaction needed to be processed. She told Mr. Jorge that at other branch locations she would have a fellow financial planner colleague help, but at Richmond Hill she asked her investment retirement planner.

[98] This raised three concerns for Mr. Jorge: (a) compliance, in that Mr. Tertipis was processing a trade when he had not confirmed with the client that the trade was suitable; (b) compensation, as investment retirement planners should not be compensated for processing transactions for financial planners; and (c) productivity in general, as the time Mr. Tertipis spent helping Ms. Silva was better directed to his own duties.

[99] Mr. Jorge did a bit more digging. On December 8, 2017, at 1:09 p.m., Mr. Jorge set out his preliminary findings in an email to Ms. Bosnjak (as RVP FP for the branch). Copied were Ms. Papaevangelou (as Ms. Silva's manager), Mr. Spadafora (RVP, Investment Retirement Planners for the branch), and Tifany Johnsen (RMFI Compliance). Highlights of the memo include:

- There were 11 such transactions by Mr. Tertipis for Ms. Silva over the previous year;

- Mr. Tertipis did not meet with the clients but instead used manual forms prepared by Ms. Silva to post the trades;

- Mr. Tertipis believed that the Phone/Fax/Order procedures did not apply to these transactions because they were posted within 5 days of the form being signed;

- Mr. Tertipis said he was not doing the trades to be paid, although he acknowledged his actions would benefit his volume numbers;

- Ms. Silva confirmed she asked for Mr. Tertipis' assistance when she was going to be out of the office. She would complete the trade ticket (trade date, amount, fund selection, account number) and get the client's signature before giving the ticket for Mr. Tertipis to post;

- Ms. Silva said that at other locations other financial planner colleagues would assist in a similar manner;

- Ms. Johnsen agreed that, at a minimum, Mr. Tertipis was likely in breach of the Phone/Fax/Email policy, and she would work with her team to determine what, if anything, was reportable for either Mr. Tertipis or Ms. Silva;

- Ms. Johnsen would investigate whether Mr. Tertipis had manipulated his compensation; and

- Any benefit that Ms. Silva may have received in terms of volume protection would be left to Ms. Papaevangelou and Ms. Bosnjak.

[100] No insider trading was unearthed. Nor were the transactions suggestive of fraud or theft. Any misconduct lay at the feet of Mr. Tertipis, who had the potential to profit by assisting Ms. Silva. There was an outside chance Ms. Silva may have enjoyed some volume protection, but this was not within Mr. Jorge's purview.

[101] The only negative thing Mr. Jorge could posit against Ms. Silva was that for six of the eleven occurrences, her calendar showed she had scheduled appointments throughout those days, which led Mr. Jorge to conclude Ms. Silva was at the Richmond Hill branch and available to meet a client. However, as noted earlier, Ms. Silva worked in multiple branches, and could have been in any one of them and connected to RBC's network. The calendar did not differentiate between branches.

[102] Despite the detection of some concerning actions of Mr. Tertipis, and any yet-to-be qualified as misconduct of Ms. Silva, things shook down quickly. Ms. Papaevangelou brought Mr. Berry into the loop, forwarding Mr. Jorge's email to him at 1:48 p.m., copying Ms. Bosnjak.

[103] Ms. Papaevangelou's text indicated the email was being sent further to their discussion, so they had clearly spoken in the interim. Ms. Papaevangelou confirmed that she would engage CIS "as well." CIS, or Corporate Investigation Services, was the internal team at RBC responsible for investigating workplace misconduct, fraud, and policy breaches.

[104] Mr. Berry replied to both Ms. Bosnjak and Ms. Papaevangelou, asking they ensure Ms. Johnsen and Mr. Jorge knew CIS was being engaged. Ms. Bosnjak agreed with Mr. Berry, commenting that she would have asked Mr. Jorge to engage CIS first "given our situation." When asked in cross-examination whether "our situation" meant the current situation with Ms. Silva, Ms. Bosnjak stated she was referencing their situation with CIS. When asked to clarify this comment, Ms. Bosnjak could not do so satisfactorily. I find that she was referring to the situation with Ms. Silva.

CIS Investigates

[105] At 4:09 p.m. on December 8, 2017, Ms. Papaevangelou sent the following email to CIS, copying Ms. Bosnjak as follows;

> Subject URGENT investigation request
>
> Importance High
>
> Please begin an investigation on an employee named Ravini Silva
> Employee # XXXXXXXX immediately.

> Serious concerns and potential breach of code of conduct and adhering to compliance guidelines is a concern as listed below.

[106] Ms. Papaevangelou failed to ask that CIS also investigate Mr. Tertipis, the only person identified by Mr. Jorge who had breached any policy. She corrected this oversight on December 11, 2017, emailing CIS and asking that Mr. Tertipis be investigated as well.

[107] Mary-Lynne Anstett was assigned to conduct the investigation on behalf of CIS.

Mr. Tertipis

[108] The investigation into Mr. Tertipis was in respect of trades he posted for clients anchored to Ms. Silva. By December 22, 2017, Ms. Anstett had concluded there was no evidence of collusion or improper activity between Mr. Tertipis and Ms. Silva. Ms. Anstett closed her investigation of Mr. Tertipis.

[109] Mr. Tertipis was provided with a Final Written Warning, listing his infractions as (a) taking compensation he was not entitled to, contrary to the mutual fund compliance procedures; (b) breaching RBC's Phone/Fax/Email policy eleven times; and (c) not being forthcoming with management. The compensation he received from the trades was clawed back.

[110] RBC objected to the introduction of the Final Written Warning, arguing it was irrelevant to the issues before the court. Mr. Tertipis was punished for different conduct, and there was no context for what transpired. I overruled the objection.

[111] Mr. Jorge could not say whether CIS had ever interviewed Mr. Tertipis.

Ms. Silva

[112] The investigation against Ms. Silva quickly surpassed the original mandate of the Tertipis trades.

[113] On December 21, 2017, Ms. Papaevangelou brought the following new concerns to Ms. Anstett's attention:

> (a) that Ms. Silva had amended client contact history well after the date she met the client, in order to better support a compensation claim that was being questioned by management;
>
> (b) that Ms. Silva provided Ms. Lee with a client engagement letter for client MM that appeared to be fraudulent; and
>
> (c) that Ms. Silva submitted a CEL [Client Engagement Letter] for client AW where the date was changed from June 16 to December 2017. These were wholly unrelated to the Tertipis trades.

[114] On January 5, 2018, Ms. Anstett strategized with Ms. Papaevangelou and Ms. Bosnjak on CIS's next steps.

[115] On January 22, 2018, Ms. Papaevangelou and Ms. Bosnjak asked Ms. Anstett for updates in advance of a meeting with ERA and legal. They asked whether the incidents identified in Ms. Papaevangelou's December 21, 2017 email were one-offs or pervasive actions.

[116] Ms. Anstett's notes indicate she was asked to look through Ms. Silva's work emails to determine whether she was maintaining contact with her prior manager, Ms. Starodoub, who may have been advising her, and to review Ms. Silva's MSN/Lync chat reviews for any "incriminating" discussions with other employees.

[117] Ms. Anstett agreed during cross-examination these issues were not germane to CIS' mandate.

[118] Ms. Anstett tried to walk back her use of the word "incriminating." She testified it meant she was looking for situations similar to the Tertipis trades. Ms. Anstett's explanation failed to satisfy me this was the case, and I find she was actively looking for something to use against Ms. Silva.

[119] Ms. Anstett could not recall which of Ms. Papaevangelou or Ms. Bosnjak asked her to look for incriminating information.

[120] Ms. Bosnjak could not remember who asked Ms. Anstett to look for incriminating emails.

[121] Ms. Papaevangelou remembered. During cross-examination she testified that it was Ms. Bosnjak who asked Ms. Anstett to look through Ms. Silva's emails.

[122] Ms. Papaevangelou also confirmed that it was Ms. Bosnjak who asked Ms. Anstett to look for evidence of communications between Ms. Silva and Ms. Starodoub.

[123] It bears noting that Ms. Silva's direct manager, Ms. Papaevangelou, and regional vice-president, Ms. Bosnjak, were both actively engaging with Ms. Anstett. Ms. Anstett confirmed that during her investigation of Mr. Tertipis, she dealt only with his direct manager, Mr. Jorge.

[124] On January 24, 2018, Ms. Anstett reported the following to Ms. Papaevangelou and Ms. Bosnjak:

- On several occasions Ms. Silva sent mutual fund and other documents to clients via email to obtain signatures. In these cases, Ms. Silva did not meet with the client at the time the transaction was processed or account opened, but it was clear that the client approved of the transaction. More specifically, between August 1 to December 18, 2017, Ms. Anstett identified fourteen clients who had sent in signed documents;

- Ms. Silva had sent emails containing client information to her personal email account;

- There was no evidence Ms. Silva was in contact with her prior manager, Ms. Starodoub; and

- A review of Ms. Silva's MSN/Lync messages did not turn up anything of interest.

RMFI Compliance Investigation

[125] Ms. Anstett also shared these findings with Ms. Johnsen in Compliance at RMFI. As Ms. Anstett testified, Compliance becomes involved when CIS uncovers possible misconduct with mutual fund trading activity. Compliance conducted its own parallel investigation.

[126] Ms. Johnsen's new supervisory Investigations Senior Manager, Susan Dicks, worked the file with her.

[127] Ms. Dicks was called as a r. 53.07 witness by the plaintiff.

[128] Ms. Dicks' first day at RMFI was January 22, 2018, just four days before she was assigned Ms. Silva's file. Ms. Dicks was not fully conversant with RMFI's policies and procedures, and had yet to take, let alone complete, her new hire training modules. It took some effort during examination to get Ms. Dicks to agree this was the case. It took further effort to get Ms. Dicks to agree that when she began her investigation she had not had the opportunity to become familiar with RBC's business practices. Indeed, my bench notes likened counsel's efforts at extracting an answer as akin to pulling teeth.

[129] Ms. Dicks was provided with emails between Ms. Silva and clients where Ms. Silva had requested signatures and clients had emailed signed trade documents to her. Ms. Dicks was tasked with looking at the emailed trade documents, looking at the times on the emails and RBC's trade system to determine whether the trades were processed before a signature was received, and reviewing the emails Ms. Silva sent to her personal email address.

[130] Based on her initial review of the emails, Ms. Dicks believed there was sufficient evidence of regulatory misconduct, possible or real, to report to MFDA.

[131] Pursuant to MFDA Policy No. 6, Information Reporting Requirements, Part B, 6.1, Members [RMFI was a Member] shall report to the MFDA:

> (b) whenever a Member is aware, through a written or verbal complaint or otherwise, that the Member or any current or former Approved Person [Ms. Silva was an Approved Person] has or may have contravened any law or regulatory requirement, relating to:
>
> (i) theft, fraud, misappropriation, forgery, money laundering, market manipulation, insider trading, misrepresentation, or unauthorized trading;
>
> (ii) a breach of client confidentiality;
>
> (iii) engaging in securities related to business outside of the Member;
>
> (iv) engaging in an undeclared outside activity; or
>
> (v) personal financial dealings with a client.

[132] Accordingly, Ms. Dicks submitted an electronic Member Event Tracking System ("METS") form. The form itself has a drop-down menu with 9 different "event types" to choose from to report to the MFDA. Ms. Dicks chose "Other Theft, Fraud and Serious Misconduct."

[133] In the body of the METS, under "Violation Type", Ms. Dicks initially noted: Primary: Other: policy & procedure; Additional: Falsification / Misrepresentation.

[134] Although unclear when, an amendment to the Member Response section identified a third violation, Confidentiality / Privacy.[4]

[135] Ms. Dicks testified that she included "policy & procedure" because Ms. Silva breached both RMFI and RBC policies and procedures when she processed trades before obtaining her clients' signatures, and by sending emails to a personal email address. She included "falsification and misrepresentation" because Ms. Silva had asked clients to backdate signatures, which is a form of falsification under MFDA rules.

[136] Ms. Dicks was taken to MFDA's Bulletin #0061 – E, which speaks to signature falsification. Ms. Dicks agreed that under the (admittedly non-exhaustive) examples provided of signature falsification, Ms. Silva's actions were not captured.

[137] When Ms. Dicks submitted the METS, she had not:

- sought clarification from Ms. Silva;
- looked for paperwork in the branch that might indicate there were signatures or instructions;
- contacted clients to ask what had transpired; or
- looked at the sales platform notes or contacts.

[138] Thus, her report to the MFDA was based solely on emails to Ms. Silva's personal email account as they compared to the trade blotter.

[139] Ms. Dicks was adamant that if an investigator came across an action that looked like it <u>could</u> be reportable, it <u>should</u> be reported. According to Ms. Dicks, the MFDA does not require that the conduct being reported be validated and authenticated before it is reported.

[140] On February 6, 2018, four days after submitting the METS, Ms. Dicks shared her investigative findings with Ms. Anstett, Ms. Papaevangelou, Ms. Bosnjak, Mr. Juby, and Ms. Johnsen. Her findings consisted of four parts:

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[4] Amendments to the METS are documented in the "Document Audit" section, but the Document Audit does not specify what the amendments were, just that they were made.

1. Analysis of the email communications;
2. Highlights of the kind of confidential information forwarded to Ms. Silva's personal email account;
3. Observations; and
4. Action Steps.

[141] Under the Observations rubric, Ms. Dicks' first identified that Ms. Silva processed trades based on email instructions, not appropriately identifying the client, contrary to RMFI policies and procedures and AML (acronym unexplained). She noted that there was no confirmation as to whether Ms. Silva contacted her clients first by phone before initiating the emails.

[142] When asked whether this was an important consideration that should have been confirmed, Ms. Dicks reluctantly agreed that it should be confirmed at some point. She stated that it was not her obligation to seek confirmation before submitting the METS. Her role was to simply investigate and provide results. The confirmation function would fall to management. Ms. Dicks' purview was solely compliance.

[143] Ms. Dicks' second observation was that Ms. Silva sent agreements to clients describing the services she would provide as a financial planner, but did not witness the clients sign the documents. This observation ultimately became a non-issue.

[144] Ms. Dicks' third observation was that Ms. Silva advised clients to backdate trade documents so their signatures matched trade dates. Ms. Dicks' confirmed that she did not speak to the market operations support officer ("MOSO") who conducted the initial compliance review of these trades. That task would fall to CIS, who acted on RBC's behalf.

[145] In terms of Action Steps, Ms. Dicks recommended that Ms. Papaevangelou and Ms. Bosnjak contact Ms. Silva's clients to confirm that the transactions at issue were completed as authorized. She also recommended that Ms. Silva be interviewed to address RMFI's findings.

CIS Interview

[146] Following RMFI's investigation, it was determined that CIS would interview Ms. Silva on February 14, 2018. Ms. Silva would be permitted to have someone attend with her, and she would be asked to provide a written statement addressing the concerns raised within 24 hours of the interview.

[147] At 9:16 a.m. on February 14, 2018, Ms. Papaevangelou emailed Ms. Silva, advising that CIS wanted to speak to her, and that she was to report to the East Beaver Creek branch at 2:00 p.m. that afternoon.

[148] Ms. Silva called Ms. Papaevangelou, crying so hard it was difficult for Ms. Papaevangelou to understand what she was saying. Ms. Papaevangelou's handwritten notes indicate Ms. Silva asked her what she had done to cause the meeting, expressing that she'd done nothing wrong. Ms. Silva then asked why CIS wanted to speak to her. Ms. Papaevangelou's notes state she told Ms. Silva "I do not know why they are or what they will ask." The first part of her reply was highly disingenuous. Ms. Papaevangelou knew precisely why CIS wanted to speak with Ms. Silva.

[149] At Mr. Ahmed's request, the meeting was rescheduled to February 16, 2018. While Mr. Ahmed requested documentation outlining the subject matter of the interview in advance, nothing was forthcoming.

[150] When Ms. Silva and Ms. Ahmed reported to the East Beaver Creek branch on February 16, 2018, Mr. Ahmed advised they were not there to answer questions, but rather to determine what the meeting was about. Ms. Silva testified Ms. Anstett replied there were no accusations or complaints, this was just a cursory investigation. Ms. Anstett would not provide them any documentation to review, citing privacy concerns.

[151] Mr. Ahmed suggested alternative methods of providing documentation that would allay any privacy concerns, but Ms. Anstett maintained her position. The meeting was adjourned to March 9, 2018. Ms. Anstett did say they could have fifteen minutes to review the material before the meeting began.

[152] The March 9, 2018 meeting was held at a different location, as Ms. Silva did not feel comfortable at East Beaver Creek. She had conducted business out of that branch, and felt very on display as she made her way through the building up to the conference room.

[153] Ms. Anstett led the interview. She was joined by Jim Dolan, another CIS investigator. The interview was recorded.

[154] Ms. Silva recalls the interview starting around 11:30 a.m. to allow time for document review. Ms. Anstett's noted that their document review ran from 10:00 a.m. until 12:40 p.m., and the interview did not begin until 1:30 p.m., after lunch.

[155] Ms. Silva testified that the material put before her for review contained numerous emails and trade documents. She recalled asking Ms. Anstett for a computer so she could access her diary and log notes for assistance. Ms. Silva testified that, once again, Ms. Anstett told her this was just a cursory meeting, and CIS was looking into how Ms. Silva met with clients and performed trades. Given Ms. Anstett's "cursory" comment, Ms. Silva believed she would have another opportunity to provide information or clarification.

[156] Ms. Silva testified that the meeting was difficult, as they all seemed to be speaking a different language. In her opinion, neither Ms. Anstett nor Mr. Dolan understood how trades happened, RBC's operating systems, or RMFI's polices concerning trades.

[157] Ms. Silva testified she was asked about the trades that are the subject of this litigation: GR, PM, DN and CN. Ms. Silva understood RBC's concern to be the fact that she did not meet

these clients in person. She explained that these clients were known and trusted, and she was comfortable doing trades with them over the phone.

[158] Ms. Silva was also asked about the instances where she had asked clients to sign a document with an earlier date, and recalls explaining her understanding of RBC's procedure – when a document went missing, the client was asked to come in and re-sign the document using the date the document was initially signed.

[159] Ms. Silva recalled being shown the emails that she had sent to her home address, and agreed that she had sent them. She explained to Ms. Anstett why she had sent each of them, and that the emails were deleted once she had extracted the information she needed.

[160] The CIS interview concluded at 3:00 p.m.

[161] Following the interview Ms. Silva was permitted to return to work. No restrictions or rules were imposed on her. There were no changes to the conditions of her employment. There was no follow up from CIS. She was not advised to look for documents regarding the trades in question. In fact, CIS's conclusions were not shared with her, and she was not provided with a copy of CIS's final report before she was terminated.

[162] Curiously, Ms. Silva was not asked to provide a written statement within 24 hours. Ms. Bosnjak could offer no reason why.

[163] Ms. Silva testified she was never informed that RMFI had reported her to the MFDA.

[164] Ms. Anstett was asked in cross-examination why she did not contact the clients whose trades were at issue during her investigation. Ms. Anstett she said one reason was she did not think clients would recall a transaction that happened three-to-six months earlier.

[165] When challenged with the fact that during the CIS meeting, Ms. Silva was questioned about transactions that had happened three-to-six months earlier, a period over which she had processed hundreds of transactions, and may have experienced the same inability to remember specifics, Ms. Anstett replied that she could not speculate what Ms. Silva's ability to recall would be.

[166] Another reason Ms. Anstett did not call the clients was because there was no indication the trades were being refuted. The problem lay in Ms. Silva's failure to follow proper processes. Ms. Anstett agreed that if the clients had been called, they could have verified Ms. Silva's explanations for the trades in question.

[167] Ms. Anstett agreed that the clients should have been contacted sooner than they ultimately were, over seven years later, in the months leading up to trial.

[168] None of the collaborators involved in investigating Ms. Silva – Ms. Anstett on behalf of CIS, Ms. Dicks on behalf of RMFI, Ms. Papaevangelou or Ms. Bosnjak on behalf of RBC – took the time to contact the clients involved in the impugned transactions. Instead, the CIS report was turned around and distributed the next business day.

[169] CIS concluded that on two occasions, Ms. Silva processed withdrawal transactions for clients without meeting them in person and obtaining evidence of their authorization, and forwarded confident client and bank information to her personal email address. These actions called into question Ms. Silva's integrity, and may have involved a breach of the following Code of Conduct Integrity Provisions:

- Integrity in dealing with RBC clients, Communities and Others (protecting client info)

- Culture of Integrity: Doing what's right.

Termination

[170] Ms. Silva carried on her duties as a financial planner following the interview. She made no changes to how she conducted trades or carried out documentation changes. When asked why, Ms. Silva replied that she had no idea there was anything wrong with what she was doing.

[171] On April 20, 2018, Ms. Papaevangelou called Ms. Silva into her office, where Ms. Papaevangelou explained the reason for the meeting, and read out the termination letter to Ms. Silva in full. The letter states the following reasons for her termination:

> "…your employment with Royal Bank of Canada is terminated for cause effective April 20 2018 as a result of your deliberate actions which contradict RBC's policies and procedures. Your actions included processing withdrawal transactions for clients without meeting them in person and prior to obtaining evidence of the client authorization and forwarding confidential client and Bank information to your personal email account, thereby exposing RBC and its clients to risk."

[172] Ms. Papaevangelou testified that after reading the letter she provided Ms. Silva with a package that all RBC employees receive when leaving the organization, and advised Ms. Silva she would have three months of access to "Lifeworks," a counselling network provided by RBC. Ms. Papaevangelou left the meeting and a Lifeworks counsellor met with Ms. Silva. Ms. Papaevangelou also arranged for a taxi to ensure Ms. Silva made it home safely.

[173] No further explanation for her termination was provided. Indeed, Ms. Silva did not learn the nature of the allegations relied upon for her dismissal until she obtained copies of the NOT, the METS Reports, and the documentation produced over the course of this lawsuit.

[174] On March 22, 2018, Ms. Dicks amended the METS to add her findings:

- A review conducted by the Member's partner evidenced the AP [authorized person] breached internal information security policy by sending confidential client information to the AP's personal email.

- It has been confirmed that on two occasions, the AP processed transactions for clients before obtaining the signed documents. Trades were authorized and documents were signed.

- The AP also instructed 3 clients to backdate signatures on KYC/trade documents, in relation to transactions previously authorized by the clients.

[175] While the explanation Ms. Silva provided for sending the emails to her home address was included in the METS' commentary section, her explanations regarding the processing of documents or backdating were not. When pressed during cross-examination that Ms. Silva's explanation for the backdating allegations was important information that should be included, Ms. Dicks became argumentative. Ultimately, while she conceded that relevant information brought to her attention while her investigation was open would have been added to the file, she said the backdating explanation would not be relevant to the regulator.

[176] When she amended the METS in March, Ms. Dicks could not recall whether she had asked Ms. Papaevangelou or Ms. Bosnjak whether they had spoken with the identified clients, despite her clear recommendation that they do so on February 6, 2018.

[177] The March amendment to the METS listed the Disciplinary Action taken as "Termination".

Other Regulatory Filings

Additional METS

[178] Two additional METS reports were submitted by RMFI.

[179] Ms. Dicks testified that the second METS of May 4, 2018 was for the termination of Ms. Silva's mutual fund license.

[180] The defendants objected to the introduction of the third METS on the grounds that the plaintiff had not indicated she would be relying on it at trial in support of her defamation claim. Accordingly, the defendants did not put the third METS to their expert, or prepare their witnesses to speak to it. I overruled the objection. This was a document in the defendants' possession, produced and discovered during litigation. Further, the conduct referred to in the 3rd METS report was expressly pleaded in the defendants' fresh as amended statement of defence as cause acquired after termination[5].

[181] The third METS was submitted in respect of a leverage strategy document ("LIA") where the defendants allege Ms. Silva re-used HC's signature from a previous draft of the same document. The third METS notes this infraction as "Active Signature Falsification."

[182] Ms. Silva explained to the court that when the LIA document was scanned to management for review on February 28, 2017, a document that was once three pages became five pages

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[5] After-acquired cause as not advanced at trial.

with the addition of further information from the client, and these pages were scanned incorrectly.

[183] In cross-examination, Ms. Papaevangelou testified that she did not contact the client HC to determine what version of the document he had signed, because she believed Ms. Silva's explanation that she had simply mixed up the papers. The record tells a different story. Ms. Papaevangelou not only reported to Ms. Dicks that Ms. Silva had submitted two versions of the LIA, but she also brought the incident to the attention of CIS and Mr. Berry.

[184] The LIA incident formed the basis for the third METS filed in May 2019, a year after Ms. Silva was dismissed, and after litigation had commenced.

Notice of Termination

[185] The NOT is a regulatory filing made with the OSC when a registered individual leaves a sponsoring firm. As noted at the beginning of these reasons, The NOT is filed with the National Registration Database using Form 33-109F1, and is notice to all interested parties that the individual is no longer authorized to act on behalf of the sponsoring firm.

[186] One of the NOT's purposes is to provide regulatory oversight, ensuring that if an individual leaves amid allegations of misconduct, future employers can conduct appropriate due diligence during the hiring process.

[187] The NOT, completed by Ms. Papaevangelou, provided that Ms. Silva was dismissed for cause, and reported that she had been investigated for possible material violations of fiduciary duties, regulatory requirements or compliance procedures. Further, Ms. Silva had repeatedly or materially failed to follow compliance policies or procedures. The "Details" section sets out the following:

> The investigation determined that, contrary to RBC policies, the individual forwarded confidential client and RBC information to her personal email account and processed authorized transactions for clients prior to obtaining their signatures.

[188] The NOT, like RBC's termination letter, is silent in respect of the back-dating allegations.

[189] After receiving the NOT, the OSC requested written submissions from both Ms. Silva and RMFI. Ms. Silva's initial written response refuted the allegation that she had engaged in transactions without the client's authorization or signature. She conceded to sending an email to her personal email address, but emphasized she was unaware there was an attachment.[6]

[6] During cross-examination, counsel focused on the fact that Ms. Silva referenced one instance of sending an email, when she had done so twice. However, RMFI's response to the OSC is equally ambiguous as to the number of times this occurred.

[190] Mr. Ahmed provided a more fulsome submission on Ms. Silva's behalf a short time latter, setting out the background against which the CIS investigation took place, and providing greater detail on the two allegations contained in the NOT – processing trades before obtaining the proper client authorization, and forwarding RBC emails to her personal email address.

[191] Ms. Johnsen replied on behalf of RMFI, confirming there was no financial loss to RBC or RMFI, and that Ms. Silva had no prior history of regulatory misconduct. RMFI advised that its investigation concluded the three allegations of misconduct had been made out. Ms. Johnsen provided Ms. Silva's explanations for her actions.

[192] The enforcement department of the MFDA conducted a review into the allegations of misconduct leading to Ms. Silva's termination. As with the OSC, MFDA asked Ms. Silva and RMFI for written responses to the allegations of forwarding confidential emails to Ms. Silva's personal email address, processing trades prior to obtaining the client's written authorization, and instructing clients to backdate documents.

[193] Once again, Mr. Ahmed replied on Ms. Silva's behalf.

[194] RMFI provided a fulsome response to the MFDA, confirming that there was no evidence of misconduct with the clients' personal information, and that RMFI had not sent letters to any clients regarding the allegations of backdating and processing of trades before obtaining a client signature. RMFI advised that no additionally supervisory steps had been taken, and that there were no client complaints or historical regulatory findings.

[195] On October 30, 2018, four months later, the MFDA released the results of its review. The MFDA found Ms. Silva to be in breach of MFDA Rule No. 2.1.1(b) Standard of Conduct; MFDA Rule 5.1(b), Requirement for Records; and MFDA Rule No's 2.5.1 and 1.1.2, Compliance by an Approved Person.

[196] The MFDA labeled the breaches as "minor in nature". The MFDA took no action beyond a cautionary letter designed to prevent similar breaches in the future. Possible sanctions included a warning letter or formal disciplinary proceedings.[7]

[197] I would ask the reader to let that sink in. The misconduct that led RBC to terminate Ms. Silva was of such minor concern to the national regulator, overseer of all mutual fund firms and their representatives, that no sanction was deemed necessary.

ALLEGATIONS OF CAUSE

[198] A significant amount of trial time was spent going over the trades and emails at issue in this litigation in minute detail. This included reviewing the mechanics of how trades are processed, compliance policies for trades, the process of checks and balances, which employee checks trade documents for what (for example, MOSOs vs BSOs [Branch Compliance Officers]), what systems are used when (for example, the E-Content

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[7] Based on information provided by the MFDA in a follow up reply to Mr. Ahmed.

Management Systems [ECM]), detailed review of trade blotters, etc. While this information was important as context for the evidence that was introduced, it is not inimical to my ultimate decision, and I will not devote the same degree of attention.

[199] As one would readily surmise, the banking industry is highly regulated and scrutinized. Banking institutions are correctly held to a very high standard by our government. This makes imminent sense given that banks, and their employees, have access to their clients' highly confidential personal information – and to their money. Personal data and financial assets demand a high level of protection.

[200] To ensure client integrity and safety, financial planners are bound to comply with internal procedures and protocols, including RBC's Code of Conduct, RMFI's Compliance Manual, and various privacy policies. Employees complete annual training on these three categories of documents, and provide a written acknowledgment of their obligation to comply with them.

[201] The three categories of misconduct RBC relied upon to dismiss Ms. Silva for cause were:

i. Forwarding two emails containing confidential RBC information to her personal email address;

ii. Processing trades before obtaining proper evidence of authorization; and

iii. Backdating of trade documents.

[202] Before I examine each category, Ms. Silva points out, correctly in my view, that cause seemed to be a moving target for RBC. The first two categories were flagged at the outset of the CIS investigation. The third was unearthed after the CIS interview. While all three categories were investigated, RBC's termination letter did not speak to the backdating of trade documents, nor was backdating trade documents one of the allegations reported in the NOT.

[203] As Ms. Dicks testified, if the defendants thought backdating was conduct serious enough to amount to cause, it should have been reported.

Forwarding Confidential information – September 14, 2017 and December 16, 2017

[204] Section 2.0 of RBC's Client Privacy Policy precludes employees from sending restricted, confidential, or internal information to a personal account.

[205] The email Ms. Silva forwarded to herself on September 14, 2017 was from an associate. It contained a five-line breakdown of her book of business as of July 31, 2017, i.e. 86% of her clients held long term funds, 87.7% of her clients had over $100,000 in investments, and so forth. This was information Ms. Silva needed for an off-site meeting the next day.

[206] Attached to this email was Ms. Silva's Client Management Report containing the names, ages and account balances on dozens of clients. She testified she did not realize there was an attachment to the associate's email. Once Ms. Silva printed the email from the associate,

she deleted the email. The email was not shared with anyone, and it was sent for a work-related purpose.

[207] It was put to Ms. Silva during cross-examination that at the time she sent this email, she was considering leaving her role as a financial planner, and it would be helpful to have this information if she ever wanted to contact the clients and move her book of business with her. Ms. Silva replied that a) she never considered leaving her job; and b) she was already connected with most of her clients by Facebook and LinkedIn, and the attachment would have been of no value to her.

[208] The December 16, 2017 email was the very same email she received from Ms. Lee at 12:10 a.m., finally approving the GBP strategy for client BW. There was no opportunity to print the document at the branch before her 8:30 a.m. meeting with the client, so Ms. Silva forwarded the email to her personal email address and printed the document from home.

[209] In sending it to herself, Ms. Silva overlooked the fact that the earlier of the long string of emails contained confidential information from her initial email to Ms. Lee the previous month. Ms. Silva deleted the email after printing what she needed for her meeting. She did not share the email with anyone. Again, the email was sent for a work-related purpose.

[210] I note that while two instances of forwarding emails were flagged by CIS, both Ms. Silva and RMFI reference only one instance in their responses to the OSC and the MFDA.

Processing Trades Before Obtaining Proper Evidence of Client Authorization

[211] Ms. Lee testified that the preferred method for obtaining a client's trade instructions is in a face-to-face meeting. However, the Compliance Manual provided an exception for familiar and trusted clients, the Phone/Fax/Email policy. In circumscribed instances, financial planners could forego the in-person meeting if, before processing the trade, the financial planner obtained a fax or PDF with the client's instructions, including the date, client name, account number, dollar value, fund name, client signature, and a contract number.

[212] These documents are not-standard RBC forms, and because they are not generated by RBC, they are not equipped with a barcode. Barcoded RBC-generated documents are automatically attached to the client file. Non-standard form documents are funneled to a validation queue to be manually attached to the file. These documents, which are to be kept in the branch for 45 days, can become lost in the system.

[213] RBC claims that Ms. Silva processed authorized trades for clients PM and GR before she obtained full written instructions. Ms. Silva disagrees, and believes she complied with the Phone/Fax/Email policy. But she had no way of proving this seven years later. RBC had failed to speak to either the affected clients or compliance personnel for clarification, or search for non-standard forms that might still have been at the branch.

[214] Ms. Silva explained that PM and GR initiated the trades in question by email, asking her to make a redemption from their investments. RBC had a copy of those emails. Ms. Silva testified that she would have spoken to the clients to confirm their instructions before

processing the trades. Ms. Silva testified that PM would have either faxed or dropped off her written authorization at the branch. She asked GR to drop off a non-standard form at the Ajax branch the next day. Ms. Silva produced emails to a Ms. Henderson at the Ajax branch which support this.

[215] PM and GR testified at trial. While they recalled authorizing the trades, they could not speak to how the trades were processed.

[216] PM and GR were well-known to Ms. Silva. In other words, familiar and trusted. The PM trade was identical to a trade Ms. Silva had done for her a few weeks earlier. The transaction for GR was consistent with withdrawals made by her in the past.

[217] A third allegation of processing trades before proper authorization was alleged at trial, although not included in the first or second METS, or the NOT. This client, DN, testified that he did not recall the particular transaction, but his evidence aligned with Ms. Silva's. When they met to do what he referred to as a rebalancing, they would review his portfolio and decide what to sell and what to buy. DN would sign the paperwork during this face-to-face meeting, and Ms. Silva would use the paperwork when the transaction was processed at a later date.

[218] PM, GR, and DN confirmed that RBC did not contact them when the trade irregularities came to light to ask whether they had spoken to Ms. Silva or provided written instructions. Rather, they were contacted in 2024, in the lead up to trial, more than seven years later. Their affidavits attaching the emails produced at trial were drafted by RBC.

Backdating Trade Documents

[219] Leo Purcell, the defendants' expert on compliance, testified that the integrity of documents and records is essential to ensure transparency, accountability, and the protection of investors in the security industry. Both the MFDA and RBC had policies and procedures for recordkeeping.

[220] Backdating documents is the third ground upon which the defendants dismissed Ms. Silva for cause. Ms. Silva freely admitted to doing exactly this when a document went missing. She testified this had been her practice throughout her time at RBC. Her first branch compliance officer in 2007, Maurice Tang, taught her that the date on a replacement signature needed to match the original trade date. Ms. Silva identified other RBC staff throughout the years who confirmed this was the process, including compliance officers Penny and Wavelyn at the Ajax branch, and her former branch manager Michael Zhou.

[221] Sandy Perkins testified at trial, under summons from the plaintiff. At the outset, she respectfully indicated that she did not wish to be called as a witness.

[222] Ms. Perkins was a branch manager at RBC with compliance responsibilities from 2013 to 2020. She told the court that the preferred process for obtaining client signatures was in a face-to-face meeting. She advised that while there was an electronic process that could be followed, it did not work very well back in 2017, because signatures were not always captured.

[223] Of particular significance, Ms. Perkins' evidence revealed that if a document could not be found, a duplicate copy of the document would be created, and the client would be asked to come into the branch and resign the document, using the date of the original signature.

[224] There were at least three instances where Ms. Silva implemented this policy with management's knowledge.

[225] Ming Lam was a MOSO at RBC, tasked with ensuring transactions are processed correctly, regulatory requirements are met, and operational issues are resolved. If she found an irregularity with a trade, an Out-of-Order ("OOO") was sent to the financial planner.

[226] On December 12, 2017, Ms. Lam emailed Ms. Silva an OOO advising that a KYC (Know Your Client[8]) for client SW was missing. Ms. Papaevangelou and Mr. Zhou were copied on this email. Ms. Silva replied "all" that she would need is to get the client back in for a signature. On December 15, 2017, Ms. Papaevangelou shared Ms. Silva's email with CIS, not as an example of backdating, but rather as an example of the numerous OOOs and compliance deficiencies generated by Ms. Silva.

[227] This KYC, produced in RMFI's Affidavit of Documents, bears SW's signature, with a date of December 9, 2017. Ms. Silva was having clients sign replacement documents using the date the original document was signed under Ms. Papaevangelou's watch.

[228] On January 30, 2018, Ms. Lam emailed Ms. Silva a follow up to an earlier OOO advising that a KYC for client VC was still missing, copying Ms. Papaevangelou and Mr. Zhou. Ms. Silva replied "all", advising that she would need a few days to get the form signed. Ms. Silva emailed client VC a new KYC, asking that he sign and date it for January 10, 2018. Client VC's signature on the KYC, found at page 81 of Exhibit 11, is dated January 10, 2018.

[229] On January 31, 2018, Ms. Silva emailed Ms. Papaevangelou, copying Ms. Lam, advising client VC had signed a manual form. On February 6, 2018, Ms. Lam confirmed receipt of the manually completed KYC on January 10, 2018. Once again, under Ms. Papaevangelou's watch, Ms. Silva had a client re-sign a document using the original date the form was signed.

[230] On February 27, 2018, Ms. Lam advised Ms. Silva that a KYC for client MK was missing, again copying Ms. Papaevangelou and Mr. Zhou. Ms. Silva replied "all" that the document had been e-signed and, since it was not showing up in the system, she would need a week or so to get the client back in to sign. On March 7, 2018, Ms. Lam emailed Ms. Papaevangelou a copy of the KYC and trade ticket. While the KYC was not produced, Ms. Papaevangelou did not disagree that the document would have been signed with the original date, not the replacement date. Once again, this was notice to RBC that Ms. Silva was asking clients to sign a missing document with the date the original document was signed, not the date the replacement document was signed.

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[8] An RBC-generated document that is completed when an account is opened.

[231] When put to Ms. Papaevangelou during cross-examination that this was an opportunity to correct Ms. Silva if she was following an unsanctioned policy, Ms. Papaevangelou answered that her job was to ensure the trades were reasonable, not to check dates. She expected all financial planners to follow the Code of Conduct and MFDA regulations when completing documentation.

[232] When asked whether, as the branch compliance officer, it was her obligation to provide guidance as to the procedure to be followed when a document/signature goes missing, Ms. Papaevangelou confirmed that she would have "guided everyone on the team and refreshed every person on the team that's licensed, to understand the policies and procedures" of both the Code and Conduct and the MFDA compliance manual.

[233] This next example is perhaps the most damning indictment of RBC's position on the backdating issue. The plaintiff called Linda Kaczor as a witness. From 2004 to 2019, Ms. Kaczor was a financial planning associate. Financial planning associates supported the financial planners to help them grow their book of business. Ms. Kaczor supported Ms. Silva from 2016 to 2018. She testified to Ms. Silva's high level of output – she was the busiest of the financial planners Ms. Kaczor supported.

[234] On June 8, 2018, Ms. Kaczor made the following note to her file regarding client DN:

> Client signed Manual Contribution e-Form 3218 for March 29, 2018 contribution of $22,000…authorizing the trade originally posted by FP Ravini Silva on March 28, 2018 at 4:34 p.m. with telephone instructions from client. Original trade was Out-of-Order as the ticket was missing client's signature. Client has confirmed authorization for the trade and has provided signed copy to support original trade and instructions. FP no longer with RBC but originally signed Transfer Acknowledgment form that was missing the client's signature.

[235] Ms. Kaczor testified that these were not notes she made on her own initiative, as this is not information she was privy to. She testified she was instructed to ask the client to come in and re-sign the paperwork by the manager of financial planning at the time. Tammy Papaevangelou.

[236] Form 3218 is an internal RBC document designed to process a manual contribution to an investment account.

[237] Ms. Kaczor was shown five pages of photographs of screenshots, purported to be the Form 3218 referenced in Ms. Kaczor's notes. The document looks to be signed by DN. Below DN's signature is signature line for the mutual fund representative. In place of Ms. Silva's signature is the following notation: *See attached F.P. signature Mar 25/18. F.P. no longer with RBC as of Mar 20/18*.

[238] The providence of these five pages is shrouded in mystery. Ms. Silva produced them in her 2024 Supplementary Affidavit of Documents. In response to RBC's written

interrogatory, Ms. Silva answered that she received the pages in the mail anonymously, after she had been dismissed. She did not know who mailed them to her.

[239] Ms. Kaczor readily recognized the photographs as being of a Form 3218. RBC vigorously objected to these five pages being entered as an exhibit. While they looked to be photographs of a Form 3218, they were not an actual Form 3218 produced by RBC. They may have been altered in some fashion, and their authenticity could not be confirmed.

[240] Ms. Alexander explained that her intention was to question client DN on this document when he was called as a witness. Accordingly, the five pages were entered as Exhibit G, and I permitted counsel to question Ms. Kaczor on them.

[241] While Ms. Kaczor could not confirm the five pages were of *the* Form 3218 referenced in her notes, she agreed this was the type of document the client would have signed.

[242] Ms. Kaczor testified that she was unaware of who provided the five pages to Ms. Silva, confirming that it was not her.

[243] On the stand, DN confirmed that the signature on the purported Form 3218 contained at Exhibit G was his signature. He testified that he personally asked RBC for a copy of the Form 3218 in respect of this transaction. He received no reply.

[244] In summary, Ms. Kaczor's June 8, 2018 notes indicate that client DN attended an RBC branch to sign a Form 3218 because the original document, signed on March 28, 2018, was missing his signature. This direction came from Ms. Papaevangelou.

[245] The replacement Form 3218 signed by DN no doubt includes a date.

[246] RBC was ordered to produce all documents in its possession related to the trade referenced in Ms. Kaczor's June 8, 2018 note. RBC did produce a Form 3218, which was entered as Exhibit 50. However, the form contained Ms. Silva's signature and was dated March 28, 2018. DN's signature was not on this version of the Form 3218.

[247] Exhibit 50 contained nothing that referenced the client coming in on June 8, 2018 to sign something for March 28, 2018. Exhibit 50 was not the document the court anticipated receiving. Both Ms. Papaevangelou and Ms. Dicks testified that such a document should exist.

[248] Without Exhibit G, the other examples of backdating satisfied me that Ms. Silva's practice of having clients re-sign a missing document or signature using the original date was open and transparent, and therefore accepted, if not condoned, by RBC.

[249] Exhibit G did not factor into my conclusion. However, why RBC choose not to produce the Form 3218 will remain as much a mystery as the identity of the person who mailed Ms. Silva the screenshots.

JURISPRUDENCE

[250] No employee has a guaranteed entitlement to indefinite employment. An employer may terminate the employment relationship without cause at any time, provided it satisfies its statutory and common law obligations, including reasonable notice.

[251] Conversely, an employer who shows just cause for termination can dismiss an employee without notice or pay in lieu of notice: *Geluch v. Rosedale Golf Assn.*, 2004 CanLII 14566 (Ont. S.C.), at para. 81.

[252] The burden is on the employer to demonstrate there was just cause for termination. Just cause carries a high, onerous burden. Merely breaking a rule or performing poorly is not enough: see *Render v. ThyssenKrupp Elevator*, 2022 ONCA 512.

[253] Just cause can be said to be behaviour that runs contrary to an employee's duties. It is conduct that goes to the root of the employment contract, striking at the heart of the employment relationship. In other words, it must be demonstrated that the employee's conduct was so serious in nature that it in effect broke the employment relationship.

[254] A finding of misconduct does not, in and of itself, support a with cause dismissal. Cause can only be established through an inquiry into whether the evidence substantiates employee misconduct, and whether, in the circumstances, such misconduct justified the employee's termination without notice: *McKinley v. BC Tel*, 2001 SCC 38, [2001] 2 S.C.R. 161, at paras. 33-34.

[255] The court characterized this as a "contextual approach": *McKinley*, at para. 51.

[256] When applying the contextual approach, the court should assess the nature and seriousness of the conduct, the surrounding circumstances in which the misconduct occurred, the nature of the particular employment contact, and the position of the employee: *McKinley*, at paras. 48-57.

[257] In *McKinley*, the court emphasized the importance of proportionality between the severity of the alleged misconduct and the sanction imposed:

> [53] Underlying the approach I propose is the principle of proportionality. An effective balance must be struck between the severity of an employee's misconduct and the sanction imposed. The importance of this balance is better understood by considering the sense of identity and self-worth individuals frequently derive from their employment, a concept that was explored in *Reference Re Public Service Employee Relations Act (Alta.),* 1987 CanLII 88 (SCC), [1987] 1 S.C.R. 313, where Dickson C.J. (writing in dissent) stated at p. 368:
>
> > Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a

> contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.

[258] At para. 33, the Supreme Court held that “an employee’s misconduct does not inherently justify dismissal without notice unless it is ‘so grievous’ that it intimates the employee’s abandonment of the intention to remain part of the employment relationship.”

[259] As part of its contextual analysis, the employer shall consider whether there are reasonable alternatives to termination, such as coaching, verbal warnings, written warnings, and performance improvement plans: *Stone v. SDS Kerr Beavers Dental*, 2006 CanLII 21073 (Ont. S.C.), at para. 106, aff’d 2007 ONCA 543.

[260] In other words, progressive discipline.

[261] Terminating an employee for cause has been described as the “capital punishment” of employment law:

> The important factors emerging from these expressions of the principle of law include that the misconduct must be “serious”; that the misconduct must amount to “a repudiation of the contract”; that the acts “evince of intention to no longer be bound by the contract”; that dismissal is an “extreme measure”; and must not be resorted to in trifling cases. As previously observed, just cause is truly is [*sic*] the “capital punishment of employment law.”
>
> See *Carscallen v. FRI Corp.*, 2005 CanLII 20815 (Ont. S.C.). at para. 72, aff’d 2006 CanLII 31723 (Ont. C.A.).

ALLEGATIONS OF CAUSE NOT PROVEN

Emails

[262] I find that Ms. Silva did breach RBC’s Code of Conduct by sending confidential RBC and client information to her personal email address. Ms. Silva conceded that she was wrong to do so.

[263] However, the level of egregiousness in these two instances was extremely low. The emails remained in Ms. Silva’s personal inbox for only a short period of time, and were deleted once she extracted the information she required. Further, they were not sent with malicious intent or harm.

[264] As Mr. Purcell testified, in the event client confidentiality is breached, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (“PIPEDA”) provides that the organization must report privacy breaches to the Privacy Commissioner

of Canada and the affected individuals, if the reach poses a "real risk of significant harm." RBC did not report these two breaches.

[265] RBC relies on the decision of *Speevak v. Canadian Imperial Bank of Commerce*, 2010 ONSC 1128, to underscore the gravity of data breaches and disseminating personal information. In *Speevak*, various CIBC branches inadvertently disclosed personal information of its customers to third party businesses. A class action was commenced based on allegations that the bank failed to take adequate steps to protect personal information. It is unclear how many customers were affected, but the bank's actions in *Speevak* are vastly different from Ms. Silva's act of sending two emails to her personal email address.

[266] More analogous is the case of *Ratz-Cheung v. BMO Nesbitt Burns Inc.*, 2024 ONSC 161. Ms. Ratz-Cheung, an investment advisor, was initially terminated without cause. BMO later discovered that before her dismissal she accessed her work email from home and downloaded thousands of emails with confidential client information onto a USB stick. Ms. Ratz-Cheung kept the USB stick unsecured in her home office. She did so for personal reasons, not work-related purposes. The court held that this misconduct was a lapse in judgment, and did not justify dismissal without notice.

[267] Ms. Silva's isolated act of sending two work-related emails to her personal email address, which were subsequently deleted, does not meet the high standard required to justify dismissal for cause.

Processing of Trades

[268] There is a dearth of hard evidence to determine this allegation of cause with any certainty. That does not lay at the feet of Ms. Silva. It was solely within RBC's power to interview clients, and collect and maintain documentation in respect of these trades including Ms. Silva's calendar and diary, as well as RBC's sales platform notes. It failed to do so.

[269] The transactions were authorized, and there was written evidence of the clients' instructions and signatures. Ms. Dicks conceded that the initial emails from PM and GR were evidence of their authorization. The clients raised no issues in respect of the trades. PM and GR were longstanding clients of Ms. Silva's.

[270] Ms. Silva did not stand to benefit from the trades. Indeed, the redemption of funds left less money in investment accounts in her book of business, and the size of a financial planner's portfolio has a direct correlation to bonuses.

[271] Finally, the trades at issue were subject to compliance review at the time, and no concerns were raised.

[272] I am satisfied on a balance of probabilities that Ms. Silva followed the Phone/Fax/Email policy. If I am wrong in this regard and she did breach the Phone/Fax/Email policy, these two trades do not rise to the level of misconduct necessary to establish cause.

[273] Recall Mr. Tertipis was found to have breached the Phone/Fax/Email policy. Eleven times. He received a written warning.

[274] In *Render*, the Court of Appeal held, at para. 68, that the fact that other employees were treated more leniently can be a relevant consideration, although it must not overwhelm the analysis.

Backdating Documents

[275] RBC has failed to establish that Ms. Silva breached any policy or procedure in respect of having clients re-sign and date documents that have gone missing. To the contrary, Ms. Silva has satisfied this court that the procedure she followed was sanctioned by RBC.

[276] I cannot emphasize this next point enough. RBC provided an undertaking to produce any document which outlined the recommended process to follow when a document had gone missing. Throughout the course of the trial, RBC could not point to a single regulation, authority, policy or document that provided direction on the date to use when a document was re-signed after going missing. Their compliance expert, Mr. Purcell, could not point to a policy. Likewise, Ms. Dicks, Compliance for RMFI, could not identify a policy or procedure setting out an approved practice to follow.

[277] Ms. Lee, Mr. Jorge and Ms. Papaevangelou testified that the correct procedure was to have the client re-sign using the date the client re-signed, with a note added to the document explaining why the client was signing with a different date. However, none of them were able to adduce a document setting out this directive.

[278] The best RBC could do was characterize the acting of backdating as a form of document falsification. I disagree. If backdating was seen to be a form of document falsification, I trust RBC would have produced a policy prohibiting employees from doing so.

[279] In the absence of a policy governing the dating of missing documents, Ms. Silva cannot be found to have breached one. The backdating allegations do not amount to cause for dismissal.

[280] RBC submits that bank employees are held to a heightened standard of integrity and trust. When the bedrock of integrity and trust is fractured, a with-cause termination is an appropriate response.

[281] For example, in *Pirani v. CIBC*, 2023 ONSC 5991, a senior financial services representative was successfully dismissed for cause due to her persistent breaches of bank policy. Her infractions included failing to review client overdraft reports, accessing credit bureaus without customer consent, and altering signed mortgage payout documents. The bank had provided coaching for other, similar, compliance and privacy breaches to Ms. Pirani, and issued two prior written warnings, before dismissing her for cause.

[282] The court found that Ms. Pirani's actions were not isolated incidents, but rather a pattern of behaviour that was incompatible with her duties. The court's decision correctly underscored the need for policy adherence in the workplace.

[283] Ms. Silva's actions do not reflect a pattern of retractable conduct incompatible with her duties and obligations. Nor do they establish repeated or persistent breaches of workplace policies and procedures. Rather, the evidence suggests that the conduct arose in circumstances where clearer direction from management would have been beneficial. If the conduct continued, then a warning would be an appropriate response.

[284] Again, progressive discipline.

[285] RBC also relies on *Steel v. Coast Capital Savings Credit Union*, 2015 BCCA 127, 383 D.L.R. (4th) 481, to support its decision to terminate Ms. Silva for cause. Ms. Steel worked in IT, and was one of a handful of employees with unfettered access to every document in the company's database. Each employee had a personal electronic folder that contained confidential information, including pay grades and seniority dates. Coast Capital had a comprehensive and strictly enforced protocol requiring permission from the employee before accessing their personal folders.

[286] Ms. Steel accessed a manager's spreadsheet that tracked the priority list for highly coveted employee parking spots without the manager's permission. She was caught when the manager tried to open the same document on her computer and saw Ms. Steel was viewing it.

[287] Ms. Steel was dismissed with cause.

[288] The trial judge dismissed Ms. Steel's claim for wrongful dismissal, holding that her unauthorized review of private records caused an irreparable breakdown of the employment relationship, despite the breach occurring only once, and Ms. Steel's otherwise unblemished work history. A majority of the British Columbia Court of Appeal upheld the lower court's ruling.

[289] There is no denying that RBC places a great degree of trust in its financial planners. However, Ms. Silva's conduct does not approach the threshold of egregious misconduct established in *Steel*. Ms. Steel's conduct was an act of dishonesty. Ms. Silva's conduct did not rise to the level of deception.

INADEQUATE INVESTIGATION

[290] A leading authority on workplace investigations is *Porta v. Weyerhaeuser Canada Ltd.*, 2001 BCSC 1480, in which the court held that employers must conduct a thorough, fair, and contextual workplace investigation. It is incumbent on the employer to consider all sides of the story, and gather all relevant information.

[291] It has also been said that where an employee is being investigated for misconduct, the employer's investigation is not held to a standard of perfection, but rather a standard of adequacy: *Arora v. ICICI Bank of Canada*, 2024 ONSC 4115, at para. 102.

[292] A less-than-perfect investigation can still support an employer's decision to terminate for cause. Any flaws in the investigation would go to the weight of the evidence, not the substantive grounds for termination.

[293] Examples of an inadequate investigation include tunnel vision, prejudgment, confirmation bias, actively discounting or failing to document explanations or evidence favoring the employee, failure to provide the employee with a fair opportunity to respond, failure to give the employee specific details of the misconduct they are being accused of, and predetermined outcomes, where the investigation is an exercise to justify a decision to terminate that has already been made.

[294] The defendants contend that the CIS and RMFI investigations were executed in good faith, citing that Ms. Silva was provided with a summary of the interview questions. While accurate, this summary was handed over at 10:19 a.m. the morning of the interview. Given that the interview had previously been rescheduled twice, CIS had ample opportunity to formally notify Ms. Silva of its concerns earlier on. The deliberate withholding of information from Ms. Silva suggests that the objective of the CIS inquiry was not objective fact-finding, but rather to compromise her position during the interrogation.

[295] Further, without her computer, calendar or diary, which she requested, Ms. Silva was unable to provide an explanation for the infractions.

[296] An investigation signals an intent to conduct a comprehensive review to get to the bottom of something. If CIS and RMFI were investigating in the truest sense, they may have:

- Asked Ms. Silva to address its concerns through a written reply;

- Questioned the clients to learn whether Ms. Silva's practices ran afoul of policies and procedures;

- Secured sales platform notes, non-standard forms, many of which were still in the branches when the particular trade concerns came to light; and

- Retained Ms. Silva's calendar and diaries.

[297] The engine behind CSI's investigation was driven more by Ms. Silva's managers – one of whom Ms. Silva had lodged a retaliation complaint against a month earlier – than investigatory rigour. Ms. Anstett testified that she was never advised about the retaliation complaint.

[298] I find CSI's investigation fell woefully short of being thorough, fair, and contextual. Instead it lacked impartiality and was deeply flawed. In place of a balanced exercise, CIS's investigation was more a form of ammunition gathering.

[299] Ms. Anstett had no compliance credentials. She was not familiar with the requirements of the Phone/Fax/Email policy. Although the enforcement of RMFI's compliance policies and procedures fell within the purview of RMFI's compliance arm, there was no compliance interview.

[300] I find RMFI's investigation was overreaching. Ms. Dicks was new at her job. She had no familiarity with RBC's processes and policies. She had not completed RBC's mandatory

training. None of the allegations against Ms. Silva approached the level of “other theft, fraud and serious misconduct”, the category she chose when submitting the three METS.

[301] I acknowledge Ms. Dicks’ testimony that of the nine categories to choose from on the METS’ dropdown menu, this was the most analogous, as well as RBC’s submission that inappropriate menu choices tied its hands.

[302] This then places the onus on the author of a METS to ensure, with precision, the veracity of the information they are submitting. The consequences of failing to do so could be career ending, particularly if the METS is not corrected as new information comes to light.

[303] Neither Ms. Anstett nor Ms. Hicks was familiar with RBC’s culture, policies or personnel.

[304] RBC relied on these inadequate investigations to wrongly assert cause. Further, it made inaccurate, incomplete, and misleading regulatory reports knowing that these actions would cause permanent damage to Ms. Silva.

Ms. Silva Was Targeted

[305] Ms. Silva testified to the difficult work environment she encountered in the eighteen months leading up to her dismissal, and the toll it took on her. She described feeling harassed and tormented. RBC has denied this was the case. The evidence tells a different story.

[306] Recall that Ms. Silva served her formal retaliation complaint through her lawyer on November 3, 2017. Ms. Bosnjak testified that as of January 25, 2018, she was unaware Ms. Silva had laid a retaliation complaint against her. That was blatantly untrue. On November 21, 2017, Mr. Berry emailed Mr. Ahmed’s letter for her to review. This is documented in Exhibit 65.

[307] What follows is a sampling of the evidence to support the fact that Ms. Silva was being unfairly scrutinized.

Papaevangelou Notes

[308] Ms. Papaevangelou kept log notes on her computer, which she testified were created for coaching purposes. She agreed it was not her practice to keep notes unless there was a “situation.” With few exceptions, the log notes pertaining to Ms. Silva contain no evidence of constructive feedback, support, or guidance. Instead, the entries are observational, recording her interactions with Ms. Silva, Ms. Silva’s moods, and her level of engagement in meetings.

[309] On November, 1, 2017, Ms. Papaevangelou’s first day as Ms. Silva’s manager, they both attended the same client event in Ajax. Ms. Papaevangelou documented this encounter, indicating that she was surprised to see Ms. Silva there, and that their interaction was pleasant. Under cross-examination Ms. Papaevangelou agreed that while she had run into other people from RBC at this event, she did not make notes of any of these interactions.

[310] Mr. Berry agreed in cross-examination that comments such as "running into someone" and "documenting their mood" would be a sign that the author had concerns.

[311] Many entries document Ms. Silva's frustration at management's continued refusal to support her compensation escalation. Ms. Papaevangelou describes Ms. Silva's behaviours as abrupt, aggressive, disrespectful, rude, challenging, and confrontational, behaviour that could benefit from coaching.

[312] Ms. Papaevangelou documented the Q4 year end review, hold on December 6, 2017 from 2:00 p.m. and 3:00 p.m. Present at the meeting were Ms. Papaevangelou, Ms. Lee, and Ms. Silva. Ms. Silva's strong reaction to DNM rating was documented. This was Ms. Silva's fourth DNM in a row.

[313] Ms. Silva repeatedly asked whether what was happening to her was fair. She was told the discussion was over and that she needed to move forward. Ms. Silva then said she felt like committing suicide. Ms. Papaevangelou offered assistance; Ms. Silva demurred. Ms. Papaevangelou called Ms. Silva's emergency contact, her husband, to confirm Ms. Silva had made it home safely.

[314] At 2:00 p.m., just before the Q4 meeting started, Ms. Papaevangelou emailed financial planner in the GTA, and asked him to check whether Ms. Silva had made any unauthorized transfers during the last two quarters of 2017. Such transfers without management's authorization were prohibited.

[315] When it was put to Ms. Papaevangelou during cross-examination that she was trying to find something to pin on Ms. Silva, she disagreed. Ms. Papaevangelou then told the court she reached out to the financial planner at Ms. Bosnjak's request. Ms. Papaevangelou reluctantly agreed Ms. Bosnjak has asked her to try and catch Ms. Silva doing something she should not have been.

[316] For the record, no unauthorized transfers were uncovered.

[317] On December 7, 2017, Ms. Papaevangelou noted that at that morning's meeting, Ms. Silva gave her the cold shoulder, and Ms. Silva's presentation was of poor quality. This was the day after the Q4 meeting, when Ms. Silva had expressed suicidal thoughts.

[318] Ms. Papaevangelou was asked both in chief and cross-examination whether she came into her role in November 2017 with preconceived notions about Ms. Silva. She denied this was the case. She testified that she was documenting Ms. Silva's words and behaviours because there were "concerns of her behaviours throughout the entire year." But Ms. Papaevangelou was not her manager for most of the year. Despite the tone of her notes, Ms. Papaevangelou refused to acknowledge any preconceptions about Ms. Silva when she became her manager.

Beyond the Papaevangelou Notes

[319] On November 28, 2017, Ms. Silva submitted a Goals Based Plan ("GBP") for client BW to Ms. Lee. GBP plans required approval by the branch compliance officer for financial

planners before the plan could be implemented. Ms. Silva's follow up meeting with the clients was scheduled for December 16, 2017. On December 11, 2017, Ms. Lee responded to Ms. Silva with 24 items she identified as deficiencies or errors. Ms. Silva provided answers for all 24 items the same day.

[320] On December 14, 2017, Ms. Lee again responded with three-and-one-half pages of comments. Ms. Silva responded that same day with changes as requested.

[321] On December 15, 2017, at 1:09 a.m., Ms. Lee advised there were still outstanding items that needed to be addressed before the GBP could be approved. Ms. Silva replied at 8:30 a.m. with answers. Further Emails were exchanged throughout the day. Ms. Lee sent an email approving the plan at 12:04 a.m. on December 16, 2017. Ms. Silva was meeting with her clients that morning.

[322] I detail this particular exchange for the following reasons. First, the GBP appears to have been minutely dissected by Ms. Lee. Mr. Agardi testified that Ms. Lee was an interim manager who was already running her own team. I find it difficult to fathom that Ms. Lee would expend this level of oversight over all financial planners. Ms. Lee testified that financial plan advice must be met with rigorous due diligence to protect against future litigation with a client. I agree that should be the case, but this level of due diligence reads as excessive.

[323] Second, Ms. Silva testified she had never experienced such scrutiny over a GBP, which typically had a two-to-four day turnaround. This approval took over two weeks. I find Ms. Lee's actions were designed to frustrate Ms. Silva.

[324] Ms. Silva provided an example where she felt her integrity was being questioned by Ms. Lee. She had submitted a compensation request for a mortgage she had referred to mortgage specialist "Muskaan." Muskann called Ms. Silva to ask why Ms. Lee was emailing her to confirm that Ms. Silva had indeed referred a mortgage to her. Muskaan sent Ms. Silva a copy of Ms. Lee's email.

[325] On December 14, 2017, Ms. Lee asked Ms. Papaevangelou to check referrals to determine whether Ms. Silva was claiming for compensation improperly. Ms. Papaevangelou did so, reporting that she found nothing. Ms. Lee told her to "be on the lookout."

[326] Even Ms. Anstett was also singling Ms. Silva out for heightened scrutiny. Recall that the CIS interview was to have taken place on February 14, 2018. Ostensibly, by that date Ms. Anstett would have all the information she required. However, after the meeting was rescheduled she carried out further investigations.

[327] To wit, Ms. Anstett reviewed Ms. Silva's recent email activity. Even more egregiously, she culled Ms. Silva's personal bank account transactions from January 1, 2017 to March 7, 2018, identifying what she documented as "numerous unknown deposits and email transfers." However, a random sampling of eight such transactions revealed they were innocent deposits and transfers from Ms. Silva's husband.

[328] There were also clear indications that RBC was looking to end the employment relationship with Ms. Silva even before the CIS investigation even started, and after it had. The following examples lead me to conclude that termination was under active consideration:

- November 2, 2017 – Ms. Bosnjak email to Mr. Berry: Is there an update as I know you were looking at other opportunities or even exit.

- November 8, 2017 – Ms. Bosnjak email to Mr. Berry: Thanks – at last we spoke we were contemplating of parting ways.

- November 18, 2017 – Ms. Bosnjak email to Ms. Papaevangelou: I think we need to book a call with Doug as this has gone on too long and with it being a year of this we need to put it to rest

- February, 2018 – Ms. Papaevengelou's handwritten notes during a conversation with Mr. Berry before the CIS meeting[9]:

    - We're done, w/out cause and dismiss

    - Gut will be dismissal

    - Engage Legal

- February, 2018 – Ms. Papaevangelou's handwritten notes, possibly part of a conversation with Ms. Anstett:

    - Do we want to part ways now and how?

[329] CIS notes for January 25, 2018 contain the following entry: Discussion with Doug Berry, Maria Bosnjak; Tammy P to discuss CIS findings. We will wait to see outcome from Tifany at Compliance as to whether or not the instances regarding not witnessing client signatures and accepting a font signature are reportable to the MFDA."

[330] Ms. Papaevangelou was asked three times in cross-examination whether she was looking to find something Ms. Silva had done that was reportable to MFDA. Three times Ms. Papaevangelou would not answer the question directly. On counsel's fourth try, Ms. Papaevangelou finally answered "potentially."

[331] Even though Ms. Anstett had no role to play once the investigation was complete, she was tasked with contacting Ms. Silva regarding the return of her personal items, picking up the packed items and contacting Ms. Silva to deliver them. Ms. Silva would not speak with Anstett, who ultimately dropped off the packages to Mr. Ahmed's office. Perhaps there was nothing inherently improper with this choice, but it just hits wrong.

[9] The latter pages of these notes (EX 57) contain what I <u>would</u> describe as coaching notes.

Conclusion on Just Cause

[332] The proportionality of the response to terminate the employee must be measured against the circumstances of the employee's conduct, and whether it is reconcilable with sustaining the employment relationship.

[333] In this case, Ms. Silva's conduct does not amount to a fundamental breach of her contract of employment with RBC, such that the employment relationship could no longer viably exist.

[334] With the exception of the two emails sent to her personal email address, acts I find to be entirely trivial, the evidence fails to demonstrate that Ms. Silva engaged in the conduct RBC relied upon to establish cause. Ms. Silva's conduct at best called out for coaching or guidance.

[335] Ms. Papaevangelou very clearly testified that all alternatives short of dismissal were considered. Once again, the evidence belies this.

[336] Ms. Papaevangelou completed RBC's Dismissal Checklist on April 20, 2018. Page 2 asks the author whether other alternative to dismissal were considered. Ms. Papaevangelou checked "No". While initially testifying she did so in error, she ultimately agreed checking the "No" box was a deliberate choice.

[337] In other words, no alternatives short of dismissal were considered.

[338] I do not want to be taken as favouring Ms. Silva's position without due regard to RBC's position. I wish to be crystal clear here. Ms. Silva may have been a difficult employee. Her four managers described her as such. Their notes reference her behaviours as aggressive, disrespectful, and insubordinate.

[339] While Ms. Silva was nothing but respectful during the trial, her time on the stand provided some insight into what it might have been like to manage her. She could be dismissive. At times her testimony was circular with no real definitive answer; at other times she would be deflective. I do not think this was by conscious intention. Rather, this appears to be Ms. Silva's natural communication style.

[340] I hasten to add that none of these behaviours would come close to approaching cause for dismissal. Personality differences arise in all facets of employment. Ms. Silva worked well with her previous managers, colleagues, and administrative staff.

[341] The move to Ajax exposed Ms. Silva to Mr. Agardi, Ms. Lee, Ms. Papaevangelou, and Ms. Bosnjak. Their personalities did not mesh with hers.

[342] As I stated at the outset of my analysis, employees can be dismissed at an employer's whim, provided they receive reasonable notice, or pay in lieu.

[343] When faced with a challenging employee, employers have two options. One, they can address the impugned behaviour head on. Perhaps speak to the employee in an effort to

understand the root of the of the behaviour. Collaborate on solutions and set defined parameters on how to preserve the employment relationship.

[344] The employer then documents to file, keeping a paper trail of instances where the defined parameters are ignored. Coaching sessions might ensue, with concrete performance feedback where warranted.

[345] If this collaborative/coaching approach fails and the impugned conduct continues, the employer can avail itself of option two: dismissal, without cause, and with reasonable notice.

[346] I hasten to add, it goes without saying that the employer is at liberty to dismiss without cause with reasonable notice at any time, without having conducted any performance management.

[347] RBC did not choose any of these well-established routes. Instead, RBC went nuclear, looking for infractions and manufacturing violations where none existed, ultimately dismissing Ms. Silva for cause.

[348] Much like RBC's failure to produce the Form 3218, which its own employees testified should have existed, why RBC chose the course of action it did with Ms. Silva will also remain a mystery.

[349] One plausible inference is that RBC was motivated, at least in part, by a desire to preserve Ms. Silva's book of business.

[350] Ms. Bosnjak testified this was not the case:

> I have been in businesses where people have left, and clients have followed, and we still – we are able to always get more business in. So, when we lose, we still gain clients.

[351] This answer did not ring true. Ms. Silva was not just any financial planner. She was the quarterly performance winner in 2014 and 2015. She was the convention cruise winner for achieving excellence in sales in 2015 and 2016. In 2015 and 2016, Ms. Silva was ranked the number one financial planner in the Greater Toronto Area, and the number three financial planner nationally.

[352] As Ms. Lee testified, Ms. Silva was a top performer, performing at the highest level.

[353] Losing a book of business valued at $150 million would register a much larger impact than Ms. Bosnjak asked the court to believe.

[354] RBC has not met its heavy onus of establishing that Ms. Silva engaged in behaviour fundamentally incompatible with the core duties of the employment relationship, or that the trust required for the employment relationship was irreversibly broken.

[355] Having found that Ms. Silva was wrongfully dismissed for cause, I now turn to damages.

DAMAGES

Reasonable Notice

[356] Reasonable notice is a common law entitlement where an employment contract is terminated without cause. See *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, at paras. 19–21.

[357] When considering the length of the common law notice period, courts consider the *Bardal* factors: the age of the employee, the character of their employment, the length of service, and the availability of similar types of employment, considering the experience, training, and qualifications of the employee. Each case is unique, and notice must be determined in the context of the particular dismissal: *Bardal v. Globe & Mail* (1960), 24 D.L.R. (2d) 140 (Ont. H.C.J.), at p. 145.

[358] Ms. Silva was 47 years old at the time of her dismissal as a financial planner. She was employed for almost 12 years (November 4, 2006 to April 20, 2018). Her entire career was in banking.

[359] Ms. Silva was not particularly senior, nor did she hold a managerial position.

[360] Ms. Silva submits that the appropriate reasonable notice period is 18 months, relying on the following cases:

a) *Ennis v. Textron*, 1987 CanLII 3258 (A.B.Q.B): 52 year-old account manager with 11 years of service, 18 months;

b) *Parte v. Rogers Cablesystems Ltd.*, [1992] Carswell Alta 783 (A.B.Q.B.): 49 year-old controller with 15 years service, 18 months;

c) *Cole v. Merrill Lynch Canada*, 2005 CanLII 56201 (Ont. S.C.): 41 year old financial advisor with 18 years of service, 18 months;

d) *Clark v. BMO Nesbitt Burns*, 2008 ONCA 663, 300 D.L.R. (4th) 313: 52 year-old investment advisor with 17 years of service, 18 months.

[361] RBC contends that the notice period should be between 8 and 12 months, relying on the following cases:

a) *Korman v. Midland Walwyn Capital Inc.*, 1999 CanLII 32278 (M.B.Q.B.): 43 year-old financial advisor with 15 years employment, 8 months notice;

b) *Barrie v. Voith Canada Inc.*, 2004 BCSC 1728: 45 year-old sales representative with 11.5 years of service, 9 months;

c) *Belton v. Liberty Insurance Co. of Canada*, 2002 CanLII 15458 (Ont. S.C.), rev'd on other grounds, 2004 CanLII 6668 (Ont. C.A.): 43 year-old insurance agent with 13 years of service, 12 months; and

d) *Sharp Electronics of Canada Ltd. v. Nelson*, 2003 ABCA 57: 49 year-old sales person with 18 years of service, 12 months

[362] As Perell J. held in *Fisher v. Hirtz*, 2016 ONSC 4768, at para. 57, "[t]he character of employment factor tends to justify a longer notice period for senior management employees or highly skilled and specialized employees and a shorter period for lower rank or unspecialized employees."

[363] And further, at para 59: "[g]enerally speaking, a longer notice period will be justified for older long-term employees who may be at a competitive disadvantage in securing new employment because of their age."

[364] At 47, Ms. Silva was relatively young, and not a long-term employee disadvantaged in the job market due to her age. She was, however, disadvantaged in the job market due to the NOT, which every future employer in the financial sector obtained when carrying out due diligence before offering Ms. Silva a position.

[365] Relying on the Court of Appeal's decision in *Holland v. Hostopia Inc*., 2015 ONCA 762, 392 D.L.R. (4th) 650, at para. 61, RBC urged this court not to consider the length of time it took Ms. Silva to find employment into the reasonable notice period, submitting that fact goes to mitigation.

[366] The issue in *Holland* was whether a non-competition provision made it more difficult for the dismissed employee to find comparable employment. This is vastly different from the four corners of this case, where the sole reason Ms. Silva failed to find comparable employment lay not in any term of her employment contract, but rather in the NOT completed by RBC.

[367] As Laskin J.A. held in *Minott v. O'Shanter Development Co*. (1999), 42 O.R. (3d) 321 (Ont. C.A.):

> Determining the period of reasonable notice is an art not a science. In each case trial judges must weigh and balance a catalogue of relevant factors. No two cases are identical; and, ordinarily, there is no "right" figure for reasonable notice. Instead, most cases yield a range of reasonableness.

[368] The Supreme Court has also held that the *Bardal* factors are not exclusive. Depending on the case, other factors may come to bear: *Wallace v. United Grain Growers Ltd*., [1997] 3 S.C.R. 701, at para. 82.

[369] Ms. Silva's compensation consisted of a base salary and performance incentives, a pension plan, participation in RBC benefits, and share ownership plan. Ms. Silva's T-4 statements show her direct cash compensation between 2015-2017 averaged $183,949.

[370] Each party retained income loss experts. Both experts, who were qualified as experts, arrived at an annual income for Ms. Silva by averaging her last three years of earnings and adjusting for inflation.

[371] Ms. McKeating, for Ms. Silva, posited earnings from 2015 to 2017, inflation-adjusted to 2025 dollars, to be $235,327.

[372] Mr. Soriano, for RBC, calculated this to be $234,952 in "Scenario Two". Scenario One calculated Ms. Silva's losses using her actual 2017 earnings of $209,882. However, Ms. Silva's earnings decreased in 2016 and 2017. Mr. Soriano agreed that a "discreet event" could cause a decline. As the evidence establishes, Ms. Silva had five DMSs in same period of time, all of which operated to reduce her variable compensation by 10 per cent.

[373] Scenario Two allows for a more accurate side-by-side consideration of the two reports.

[374] Averaging the experts' 2015 to 2017 earnings calculations, Ms. Silva earned $235,000 per annum. Ms. Silva is entitled to reasonable notice in the amount of $313,333 ($235,000 ÷ 12 = $19,583.33 x 16 months). Added to this will be lost pension contributions, lost RRESOP contributions, and pay in lieu of benefits for 16 months. Deducted from this amount should be mitigation earnings of $20,954.41.[10]

Loss of Earning Capacity

[375] Ms. McKeating and Mr. Soriano were also asked to calculate Ms. Silva's loss of earning capacity. Their findings diverged due to the differing assumptions they applied:

- Rather than applying Ms. Silva's actual post-termination earnings, Mr. Soriano assumed that as of January 1, 2022, six months after earning her MBA, Ms. Silva's earnings would begin to increase over the next five years, at which point she would be earning the same as any other female in Ontario with an MBA, employed as a financial manager [excluding banking, credit, and investment managers].
- Ms. McKeating did not take the MBA into consideration.
- Mr. Soriano provided calculations for retirement at ages 55, 60 and 65.
- Ms. McKeating provided calculations for retirement at ages 60 and 65.
- Mr. Soriano was instructed to consider that as of June 1, 2026, the NOT would be modified such that Ms. Silva could resume her career as a financial planner.
- Ms. McKeating did not consider this potential.
- Mr. Soriano assumed that beginning January 1, 2024, Ms. Silva would receive employer sponsored pension plan contributions as she had before she was terminated (i.e. her loss of pension contributions ceases).

[10] Counsel to include revised amounts when drafting the Order, as the calculation for lost pensions and benefits was based on 18 months, not 16.

- Ms. McKeating calculated the loss based on Ms. Silva's post-termination defined benefit pension plan, resulting in a higher pension loss in the Soriano report.

- Mr. Soriano did not adjust the RBC FlexBenefits for inflationary increases.

- Ms. McKeating assumed that once Ms. Silva began receiving benefits they would increase annually for inflation.

- Mr. Soriano did not gross-up for income taxes purposes.

- Ms. McKeating grossed-up for income tax purposes.

[376] For the following reasons I prefer Ms. McKeating's findings over those of Mr. Soriano:

- Ms. McKeating's approach was realistic and straightforward. Utilizing Ms. Silva's average earnings between 2015 – 2017, Ms. McMcKeating projected her RBC earnings to ages 60 and 65, and reducing these amounts by Ms. Silva's actual earnings per year, to arrive at past losses to the valuation date of January 6, 2025, the first day of trial.

- Mr. Soriano's "financial manager" scenario, once Ms. Silva obtained her MBA, fails to account for the fact that Ms. Silva has never been in a management position. Further, many of the suggested roles Ms. Silva could fulfill post-MBA were managing businesses versus individuals, with a number contemplating an accounting background. While Ms. Silva had some accounting experience in Sri Lanka, these were not transferable skills.

- Mr. Soriano chose a cohort of females aged 50-54, grouping Ms. Silva into the same category as someone who had obtained an MBA in their twenties and had been working for 30+ years. This assumption fails to account for Ms. Silva's late career change.

- These assumptions affected not only Ms. Silva's future income loss, but her past as well. For example, Mr. Soriano agreed that for the period from January 1, 2022, to January 6, 2025 ("Valuation Date"), he assumed a loss that was less than her actual loss during that time period.

- In respect of the "retire at 55" scenario, Mr. Soriano agreed Ms. Silva's was a defined contribution pension, conceding that there would be no impetus for early retirement in a defined contribution pension scenario. Retiring at 55 is in my view unrealistic. While this scenario was included at the instruction of RBC, Ms. Soriano weakened his credibility by including it.

- Mr. Soriano's position that there would be no damages after June 1, 2026, once the NOT is corrected, assumes Ms. Silva will return to work immediately on that date, with no time built in to ramp up her book of business that has been dormant since April 20, 2018.

[377] It has been accepted that damages for loss of earning capacity can be appropriate in a wrongful dismissal claim. The Court of Appeal in *Boucher v. Wal-Mart Canada Corp*, 2014 ONCA 419, 120 O.R. (3d) 481, at para. 103, commented that “a claim for future loss of income can arise in an employment context where a plaintiff has not recovered from the effects of the wrongdoer's action and the plaintiff has thus suffered a loss of any earning capacity because of the wrongdoer's tortious conduct.” This speaks to the principle of putting the plaintiff in the position she would have occupied had she not been wrongfully dismissed.

[378] The Court of Appeal declined to award Ms. Boucher with loss of opportunity damages. Ms. Boucher did not have an employment contract that guaranteed her employment to age 65. Instead, the Court of Appeal found she was entitled to be put in the position she would have been in if the contract had been performed: employment subject to dismissal in accordance with the terms of her contract.

[379] I find this case to be distinguishable from *Boucher*. While Ms. Silva was not guaranteed employment to age 65, her inability to find comparable employment was directly linked to the filing of the NOT by RBC. This wrongdoing has thus left Ms. Silva unable to work in the financial planning industry.

[380] In *Ojanen v. Acumen Law Corporation*, 2021 BCCA 189, the British Columbia Court of Appeal awarded $100,000 in loss of opportunity damages to Ms. Acumen, an articling student whose legal career was delayed by her wrongful dismissal. Ms. Ojanen’s employment was terminated for cause after the employer made unfounded allegations of plagiarism and disclosure of confidential information. Ms. Ojanen sought damages for the loss of income that she suffered as a result of not being able to become a lawyer at the end of her articling term. The trial judge found that Ms. Ojanen had no reasonable prospect for employment in the legal profession in Canada while the allegations brought by the Appellants were being pursued against her.

[381] In my view, Ms. Silva’s case is similar to *Ojanen*. Ms. Silva had no reasonable prospect for employment in the financial planning profession while the allegations brought by the NOT were filed.

[382] Ms. Silva testified that she had no intention of retiring before age 65 owing to her late arrival in Canada and desire to accrue CPP. This position was not shaken during cross-examination.

[383] Ms. Silva is currently 55 years of age. She has expressed a desire to return to the financial services industry as a financial planner. I am satisfied she will do so.

[384] Assuming she resumes her career given the dictates of my judgment, a damages award to age 60 would afford Ms. Silva five years to secure a position in the field, re-build her client base, and re-establish her clients’ trust. Five years is not unrealistic – both Ms. Silva and Mr. Agardi confirmed it took Ms. Silva eight years to build her first book of business.

[385] I am satisfied Ms. Silva has established on a balance of probabilities that she is entitled to an award for loss of earning capacity.

[386] Ms. McKeating has quantified Ms. Silva's future income and benefits losses at $1,919,272 if Ms. Silva were to retire at 60. This figure includes adjustment for negative contingencies, including disability and mortality.

[387] I award Ms. Silva $1,919,272, to which shall be added pre-judgment interest.

Mitigation

[388] Ms. Silva was terminated on serious allegations of cause, including record falsification.

[389] Ms. Silva was a high-performing financial planner with a devoted customer base. She should have been able to find a new position quickly. Based on the Ajax transition debacle, experience showed her clients may have left RBC to join her.

[390] Since termination, Ms. Silva has upgraded her credentials, completing the Conduct and Practices Handbook (required to sell individual stocks), becoming a chartered investment manager, and achieving her LLQP designation (required to sell segregated funds sold through the insurance industry). Ms. Silva also obtained her MBA from James Cook University in Australia.

[391] On October 7, 2019, Ms. Silva accepted a position with Accerta Claim Services as a credit analyst. Accerta is third-party administrator, managing government-sponsored healthcare, dental, and social benefits programs. The role does not require licensing or registration. Ms. Silva has no managerial responsibilities.

[392] At the time of trial, Ms. Silva remained employed at Accerta, although she was on short-term disability. Her annual salary was approximately $69,000, with an annual bonus ranging from $2,000-$3,000.

[393] She is now over eight years post-termination. As the following paragraphs demonstrate, she remains unable to secure employment in the highly regulated banking and securities industry, all due to the NOT.

[394] RBC submits that Ms. Silva has failed in a significant way to mitigate her damages. For example, she is qualified to obtain more lucrative work than what she performs at Accerta. Ms. Silva also focussed too closely on the financial services industry and failed to explore other options.

[395] Further, Ms. Silva has failed to market her MBA adequately, not even mentioning it on some job applications.

[396] Finally, Ms. Silva has become content in her current role, applying to only 27 jobs since receiving her MBA.

[397] I will speak to RBC's last point first. Over 240 mitigation documents were produced at trial, ranging from April 2018 to March 2024. "Content" is not an adjective that applies to Ms. Silva here. Rather, I find her efforts at mitigation were superhuman, and all to no avail. She was obviously having difficulty securing a job in a field she was well qualified

in. The enthusiasm and vigor with which she began her job search in 2018 no doubt waned after being thwarted at every turn.

[398] Recall that the NOT indicated Ms. Silva was dismissed for cause. In the "Details about the Termination" section, paragraphs 7 and 8 were checked as yes. Examples of egregious conduct worthy of termination in paragraph 7 include unsuitable trades, stealing or borrowing client's money, forging client signatures, money laundering and deliberately making false representations. Paragraph 8 indicated that Ms. Silva had repeatedly or materially failed to follow compliance policies and procedures.

[399] In August 2018, Ms. Silva secured a position with TD as a financial planner. In October 2018, Ms. Silva was terminated. Mr. Liberti, TD's hiring manager, testified that once management had conducted its due diligence and found that Ms. Silva was terminated with cause, he was instructed to let Ms. Silva go.

[400] Mr. Liberti testified that he thought so highly of Ms. Silva that asked whether TD could implement checks and balances to get around grounds for dismissal. Management declined to consider this option given Ms. Silva was dismissed "for cause".

[401] Tim Van Pinxteren, recruiter for IG Wealth, testified that he wanted to hire Ms. Silva in late 2018/early 2019. However, when management received details that Ms. Silva had been dismissed for cause, Mr. Van Pinxteren was directed to end his discussions with her.

[402] Mr. Van Pinxteren reached out to Ms. Silva in September of 2019 and January of 2021 to ask whether her record had been cleared, as he was still prepared to hire her. By the time of trial, however, Mr. Van Pinxteren candidly testified that given the passage of time, even if the NOT were amended to remove the "termination with cause", Ms. Silva was much less marketable, given that her ability to bring a book of business with her has dissipated.

[403] Eric Lubomirski, recruiter for Freedom 55 Financial, testified that he was interested in hiring Ms. Silva until she disclosed the termination. If there was a termination for cause, Freedom 55 was not prepared to offer a position. Mr. Lubomirski though so much of Ms. Silva that he tried to find alternate employers who might hire her in a different capacity. Once again, these potential employers could not get beyond the "termination with cause."

[404] It was put to Ms. Silva during cross-examination that she did not mention her MBA on her resumes or job applications once she received it. Ms. Silva disagreed, testifying that she had updated her resume, and perhaps some of the applications (all submitted electronically through similar portals – Glassdoor, ZipRecruiter, Indeed) may have attached or picked up her old resume. As Ms. Silva told counsel, "Trust me. I don't want to work in this job. I would be glad to get another."

[405] Ms. Silva cannot be faulted for maintaining her hope of re-entering the field of financial services. She enjoyed success as a financial planner, both personally and financially. Even Ms. Bosnjak agreed Ms. Silva had a very big book of business for a financial planner.

[406] The defendants have failed to demonstrate a failure to mitigate. I am satisfied that Ms. Silva more than fulfilled her duty to mitigate by pursuing comparable employment diligently and persistently.

[407] The evidence firmly establishes that while there was comparable employment available, it was not available to Ms. Silva.

Aggravated Damages for Mental Distress

[408] An employee is entitled to additional damages for mental distress when an employer breaches its duty of good faith: *Honda Canada Inc. v. Keays*, 2008 SCC 39, [2008] 2 S.C.R. 362; *Boucher v. Wal-Mart Canada Corp*., 2014 ONCA 419, 120 O.R. (3d) 481

[409] As the Court of Appeal held in *Boucher*, at para. 66:

> Aggravated damages are compensatory damages. They are part of breach of contract damages. They compensate a plaintiff for the additional harm suffered because of the way the contract was breached. In a wrongful dismissal claim, aggravated damages may be awarded against the employer where "the employer engages in conduct during the course of dismissal that is 'unfair or is in bad faith'": see *Honda Canada Inc. v. Keays*, (2008), 92 O.R. (3d) 479, [2008] 2 S.C.R. 362, [2008] S.C.J. No. 40, 2008 SCC 39, at para. 57.

[410] As Bastarache J. held in *Honda*, the failure to act in good faith during the manner of dismissal can "lead to foreseeable, compensable damages" based on the *Hadley* principle. Further, see *Matthews v. Ocean Nutrition Canada Ltd*., 2020 SCC 26, [2020] 3 S.C.R. 64, at para. 44.

[411] However, "the normal distress and hurt feelings resulting from dismissal are not compensable.": *Honda*, at para. 56.

[412] The period relevant to an award of aggravated damages is not limited to the moment of dismissal. Pre and post termination conduct may be considered so long as it is "a component of the manner of dismissal": *Doyle v. Zochem Inc.,* 2017 ONCA 130, at para. 13.

[413] Ms. Silva was noticeably emotional when she testified to the eighteen months of scrutiny under her new managers that culminated in her termination.

[414] Ms. Silva's husband testified that Ms. Silva suffered considerably in the months leading up to her termination. He spoke about the emotion toll the termination has taken on Ms. Silva. In his view it shifted the dynamic of their family. Where once Ms. Silva was the nurturer and heart of the home, their roles changed over time. Mr. Silva has become both mother and father to their children, and he is also wholly responsible for household chores, cooking, and family finances. Ms. Silva's mental state was so precarious that there were times before the pandemic that he worked from home to keep an eye on his wife.

[415] Ms. Silva's family practitioner, Dr. Makhlouf, testified that Ms. Silva experienced distress, depression, and anxiety after being dismissed. Dr. Makhlouf opined that Ms. Silva's condition has worsened over time, as she relives the stress of her dismissal and the loss of her license. Dr. Makhlouf conceded in cross-examination that a favourable outcome at trial will result in a full recovery.

[416] RBC appears to argue that a projected recovery ought to preclude an award for aggravated damages. That position is not persuasive.

[417] This is not an instance of "normal distress and hurt feelings." Here we have objective medical evidence of the impact the defendants' actions have had on Ms. Silva. RBC alleged cause where none existed. RMFI completed the NOT, telling all who might have cause to review it, that Ms. Silva was dismissed for cause.

[418] I therefore award Ms. Silva $150,000 in aggravated damages.

Punitive Damages

[419] Unlike aggravated damages, which are compensatory in nature, punitive damages are directed toward punishment. The leading authority remains *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595.

[420] In *Humphrey v. Mene Inc.*, 2022 ONCA 531, 475 D.L.R. (4th) 68, van Rensburg J.A. stated, at para. 79:

> Punitive damages in breach of contract or tort cases are exceptional: their purpose is to punish a defendant for conduct that is reprehensible, and a "marked departure from ordinary standards of decent behaviour". Whereas damages for conduct in the manner of dismissal are compensatory, punitive damages are "restricted to advertent wrongful acts that are so malicious and outrageous that they are deserving of punishment on their own": *Honda*, at para. 62. They should be awarded, in addition to the compensatory damages already awarded, when rationally required to punish a defendant to meet the objectives of retribution, deterrence and denunciation, in an amount no greater than necessary to satisfy these objectives: *Boucher v. Wal-Mart Canada Corp.*, 2014 ONCA 419, 120 O.R. (3d) 481, at para. 79.

[421] RBC's witnesses collectively testified, albeit none readily, that they were aware of the consequences of a NOT with a "dismissed for cause" designation.

[422] If it has not already become abundantly clear at this stage of my reasons, I have little difficulty in concluding that RBC's conduct was harsh and reprehensible. RBC was not honest about the reasons for termination. Management clearly wanted Ms. Silva out. The formal investigation took information in, but did not seek explanations, yielding to confirmation bias.

[423] I find Ms. Bosnjak's motives became vindictive once she found out about the retaliation complaint. Mr. Berry was working both sides of the employment relationship conflict.

[424] Ms. Silva was ambushed. She was unaware what she was doing was wrong. She was unaware an investigation had commenced. Ms. Papaevangelou told Ms. Silva she had no idea what CIS wanted to speak to her about, which was patently false. Ms. Silva was not advised that either the NOT or METS had been filed.

[425] RBC is one of Canada's most revered institutions. And one of its most successful. It expects high standards from its employees. It should be held to those same standards.

[426] I find this is one of those exceptional cases where an award for punitive damages is warranted given RBC's extreme behaviour. Any such award must be a meaningful one to deter RBC from treating other employees as callously as it did Ms. Silva, and with such little disregard for the consequences.

[427] I find that a punitive damages award of $250,000 is meaningful and proportional.

[428] I appreciate that making a punitive damages award runs the risk of double recovery. This is particularly so in this case. In addition to reasonable notice, I have awarded aggravated damages, as well as a significant loss of earning capacity award.

[429] However, anything less than these four heads of damages would fail to adequately address the losses Ms. Silva has suffered over the last eight years, unable to work in her chosen field due solely to the defendants' conduct that departed to a marked degree from ordinary standards of decent behaviour.

[430] The punitive damages award is not designed to compensate Ms. Silva, but rather to underscore the court's condemnation of the defendants' conduct, which would otherwise go unpunished.

Defamation

[431] Ms. Silva submits that she was defamed through the bad faith filing of an incorrect NOT and, in a similar vein, the filing of the METS reports.

[432] A statement is defamatory if it operates to lower the reputation of the claimant in the eyes of a reasonable person: *Grant v. Torstar Corp*., 2009 SCC 61, [2009] 3 S.C.R. 640, at para 28.

[433] In *Hampton Securities v. Dean*, 2018 ONSC 101, the trial judge held that the bad faith filing of a METS was defamatory. In that case, the defendant filed a NOT which included the following statement: "[Mr. Dean] failed to follow trading desk policies & procedures – unauthorized trading resulting in losses."

[434] As the trial judge noted, a statement that a professional trader had failed to follow trading policies and engaged in unauthorized trading would seriously damage the trader's reputation in the eyes of potential employers.

[435] Recall the wording in the NOT filed by RMFI:

> "Contrary to RBC policies, the individual forwarded confidential client and RBC information to her personal email account and processed authorized transactions for clients prior to obtaining their signatures."

[436] I am not satisfied that the NOT's wording is defamatory.

[437] I make no award for defamation.

Negligence and Breach of Fiduciary Duty

[438] Ms. Silva submits that given the power the defendants had to affect her interests with respect to regulatory reporting, they were fiduciaries who owed her a duty of care to act honestly, in good faith, and competently.

[439] The defendants did not breach their duty to act in good faith by submitting the NOT. They submitted the NOT and the METS based on the conclusions of Ms. Anstett and Ms. Dicks.

[440] As I have found in these reasons, those conclusions were wrong. However, damages for these actions are better encapsulated under loss of earning capacity and punitive damages.

[441] I make no award for breach of fiduciary duty.

Notice of Termination

[442] While I found that the wording contained in the NOT was not defamatory, in light of my reasons, it is now incorrect. RBC did not have cause to dismiss Ms. Silva.

[443] I order that RMFI file with the MFDA (now IIROC) a notice of correction of the NOT. If the parties cannot agree on the form of correction, I will remain seized of the issue to ensure that the final correction accurately reflects the outcome of the case.

CONCLUSION

[444] For the foregoing reasons I award Ms. Silva the following:

- 16 months reasonable notice of $313,333, to be adjusted as I've directed.
- Loss of earning capacity damages of $1,919,272 plus pre-judgment interest.
- Aggravated damages of $150,000.
- Punitive damages of $150,000.

COSTS

[445] Ms. Silva has been wholly successful in her claim, and is presumptively entitled to her costs, subject to any offers to settle.

[446] If the parties cannot agree on costs, I will receiving written submissions as follows:

- Ms. Silva to file submissions within 30 days of the release of these reasons, limited to 10 pages;
- The defendants shall file submissions 15 days thereafter, limited to 10 pages; and
- Ms. Silva may file reply submissions 5 days after that, limited to 5 pages.

CLOSING COMMENT

[447] I feel it important to make one final observation. This trial was long and arduous. Counsel had to be on their toes the entire time. I have already described the mountain of documentation involved.

[448] Ms. Alexander, Mr. McLeod, and Ms. Warwick were the epitome of what litigators should aspire to be – courteous, professional, impartial yet not inflammatory.

[449] Mr. McLeod and Ms. Warwick had one another to rely on, and there was always at least one other RBC representative in the body of the courtroom, often in-house counsel.

[450] Ms. Alexander ran this entire trial on her own. In an extraordinarily impressive manner, she left no stone unturned for her client. This warrants the court's singular recognition.

CASULLO J.

Released: June 30, 2026