

## Ex CFO sues RBC for \$49-million, claiming wrongful dismissal, 'reputational harm' | Frank Portman

By **Frank Portman**

Law360 Canada (August 15, 2024, 10:20 AM EDT) -- In a well-documented media saga, the former Chief Financial Officer of RBC, Nadine Ahn, recently filed a wrongful dismissal lawsuit, claiming a whopping \$49 million in damages arising from the employer's assertion that there was just cause for dismissal. The damages claim is eye-popping, even to an executive employment lawyer, though none of the allegations have been proven in Court.

However, what's interesting is the reasons behind that substantial damage claim and the lessons that can be learned by other employers to avoid similar conduct and consequences. The claim highlights the importance of avoiding actions that could be considered in bad faith prior to and following the termination.



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In this case, at issue is the conduct of the employer during what appeared to be an investigation as well as the media announcements following the termination. These are both issues that arise frequently in contentious departures by executives and are tackled by executive employment lawyers.

### **RBC's conduct prior to terminating Ahn**

Ahn asserts that she was summoned to a meeting with her superior on short notice with only vague reasons given. At the meeting, the employee alleged that the employer pulled a bait-and-switch. Instead of her superior, she was met by the employer's external counsel and advised that there was an investigation into her conduct.

She alleges she was grilled for two hours on various allegations of misconduct, for which she had not been given prior notice, and was terminated based on those allegations that same day. This would suggest the interrogation was nothing but a pretense to execute a decision already made and that she was not given a fair opportunity to explain or mitigate the allegations.

These claims highlight a dynamic that arises all too frequently with workplace investigations, where an employer uses an investigation not as a method to discover evidence and come to an evidence-based decision on how to proceed but, instead, as a way of justifying a termination for cause. An investigation conducted this way is extremely problematic and can indicate bad faith.

There is no jurisdiction in Canada that mandates that an investigation be conducted before an employee is dismissed, even for cause. As a result, an investigation conducted in this manner can be seen as "for show" only and that it is conducted with a predetermined outcome. Such actions can backfire tremendously, grounding claims of bad faith that can significantly accelerate damages for senior executives. In many cases, where an employer is already convinced that an employee's conduct merits termination for cause, they are better off simply proceeding on that information rather than conducting a sham investigation.

This is not to say that investigation in this case would never have been warranted or to devalue investigations generally. They are often critical in getting to the bottom of serious workplace allegations. However, employers must ensure that their investigations are fair, and they must avoid

"putting their finger on the scales."

Given this delicate balance, any employer should consult with an executive employment lawyer before executing a just cause dismissal, due to the serious risks and high threshold associated with such dismissals.

### **RBC's conduct post-termination**

The public nature of the dismissal also significantly contributes to the extraordinary damages claim.

Within hours of the dismissal, the termination — and that it was for cause — was announced via a news release, which was published by various outlets given the high-profile nature of the parties. This formed part of the employer's alleged conduct, which Ms. Ahn asserts gives rise to millions of dollars in damages flowing from defamation, intentional infliction of mental distress and bad faith conduct.

The employee asserts that, given the ultra-competitive market for executives in her area, the public airing of the allegations has dealt a devastating, perhaps permanent, blow to her career. This resulted in various damages claims, including an increase in her notice period since the public damage to her reputation could impede her ability to find a new position of an appropriate calibre.

The dilemma of an employer dismissing a high-profile executive employee under a cloud of allegations is a fraught one. While the employer may wish to reassure stakeholders that its removal of a high-ranking executive employee is justified, making public statements carries the risk of additional claims by the departing employee for reputational harm and defamation.

While the allegations have not yet been proven and the matter is a long way from trial, given the nature of the allegations and the amount of money involved, this saga will be one to watch. In the meantime, to avoid such claims, it's advisable to consider the risks and benefits of any actions taken in the lead-up to and following a termination to avoid any perception of bad faith.

It is important that such matters be handled with the guidance of an experienced executive employment lawyer, particularly one accustomed to dealing with high-profile matters.

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