SHERRARD KUZZ LLP
Employment & Labour Lawyers

250 Yonge Street, Suite 3300
Toronto, Ontario, Canada M5B 2L7
Tel 416.603.0700
Fax 416.603.6035
24 Hour 416.420.0738
www.sherrardkuzz.com

Ontario Court Awards Excessive Damages in Two Wrongful Dismissal Cases
~ Court of Appeal May Want to Weigh In

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As the old adage goes, bad facts make bad law.

Two recent decisions of the Ontario Superior Court of Justice have attracted attention as they appear to ignore long-standing employment law principles, including from the Court of Appeal for Ontario and Supreme Court of Canada. In one case, a $1.9 million "tort" remedy was ordered, despite the fact the judge found the employer did not commit a tort. In the other case, a 14-month "*Wallace* bump" worth approximately $80,000 was added to an already lengthy 19-month notice period, despite the fact the legal concept of a *Wallace* bump was struck down by the Supreme Court almost 20 years ago.

Those who support the decisions point to what they describe as egregious behaviour on the part of the respective employers, deserving of punishment. **With respect, that's not the point.**

There is no dispute it was open to the court to hear and weigh the evidence and make findings of fact, including that the employers may have acted poorly. It was also open to the court to award a range of damages designed, in part, to punish a party for conduct the court found inappropriate (*i.e.*, aggravated and punitive damages). However, it was not open to the court to ignore, without explanation, long-standing, settled employment law principles.

We expect the decisions to be appealed to the Court of Appeal for Ontario. Until the Court of Appeal weighs in, employers should appreciate the risk these decisions create but also know that we anticipate the appeal court to restore an appropriate approach, in line with existing and well-established law.

Silva v Royal Bank of Canada[1]

What happened?

Ravini Silva was a high performing financial planner for the Royal Bank of Canada ("RBC") with 12 years of service. She was licensed to sell mutual funds and required to be registered with the Ontario Securities Commission and Mutual Fund Dealers Association of Canada.

RBC terminated Silva's employment, and alleged just cause on the basis Silva:

1. Forwarded confidential client and RBC information to her personal email account
2. Processed withdrawal transactions for clients without meeting them in person, and
3. Advised clients to backdate trade documents so the signature dates would match the trade.

[1] 2026 ONSC 3841.

The court concluded the first allegation was substantiated but did not amount to just cause for dismissal. The second and third allegations were factually true, but the court found that informal RBC policy permitted Silva's actions. In the absence of just cause, the court held Silva was wrongfully dismissed.

While this seems straightforward, what happened behind the scenes is critical to understanding the court's decision. The facts are lengthy, and we have summarized them below in greater detail than usual.

Background

- Silva was transferred from a branch in Ajax to Richmond Hill. Shortly after the move, tension arose between Silva and her new manager regarding what would happen to Silva's existing clients.
- Her manager consulted with an RBC employee relations advisor, Doug Berry, whose suggestions resulted in Silva receiving a "Does Not Meet" on her performance review and a written warning.
- Silva contacted RBC's Employee Resolution Helpline to report what she believed was bullying and retaliation against her. Her file was assigned to Berry who spoke with Silva about her concerns but did not disclose his concurrent involvement advising Silva's manager. Berry investigated Silva's complaint and determined it was unsubstantiated.

Alleged misconduct and investigation

- Silva asked another employee to complete paperwork for a transaction, in violation of RBC policy. RBC investigated and found there was no insider trading, fraud or theft.
- Silva's manager consulted Berry, and a decision was made to engage Corporate Investigation Services ("CIS") to further investigate Silva. The investigation went beyond the original mandate, and Silva was not told the subject of the investigation until the morning of the investigation interview. During her interview, she was denied access to her diary and notes and was not provided an opportunity to provide information or clarification at a later date.
- CIS concluded Silva processed withdrawal transactions for clients without meeting them in person, and on two occasions forwarded confidential client and bank information to her personal email address. Silva sent these emails to print information from her home computer prior to a meeting.
- RBC terminated Silva's employment for cause.

Report to regulator

- RBC reported Silva to the regulatory body, as RBC was obligated by law to do. The report stated Silva had been investigated for possible material violations of fiduciary duties, had failed to follow compliance policies and procedures, and was dismissed "for cause."
- Ultimately, the regulator found Silva in breach of certain rules, characterized the breaches as "minor in nature," and provided Silva a cautionary letter.

Post-termination

- After receiving the regulatory notice, two prospective employers ended discussions with Silva because of the "for cause" designation. A third recruiter told the court even if the notice was corrected, the passage of time had made Silva "much less marketable" given that her ability to bring a book of business had dissipated.

- At the time of trial, more than eight years after her dismissal, Silva remained employed as a credit analyst at a third-party benefits administrator, earning about $69,000 per year — compared to average annual earnings of $235,000 during her final years at RBC.

Court's decision

The court concluded some misconduct occurred, but not to the severity suggested by RBC, and not egregious enough to justify termination for cause.

The court was also highly critical of the process RBC followed leading up to Silva's termination. It found the CIS investigation was motivated by management's desire to terminate Silva for cause, and unfair because Silva was not given an opportunity to understand the allegations against her or appropriately respond. It was also suspicious RBC was attempting to keep Silva's clients for itself, rather than allow them to follow her to her next employer. Finally, the court was critical of the notice to the regulator for including the term "for cause" when this turned out not to be accurate.

In light of the court's dissatisfaction with RBC's conduct, it undertook a punitive approach, awarding:

- Reasonable notice of 16 months, amounting to $313,333.
- Damages for loss of earning capacity in the amount of $1.9 million, as a consequence of the "lasting and severe" consequences of the "for cause" regulatory filing.
- Aggravated damages of $150,000 and punitive damages of $250,000.

The court rejected Silva's tort-based claims of defamation, negligence and breach of fiduciary duty.

Expected Court of Appeal intervention

The award of $1.9 million for loss of earning capacity in the employment law context is unprecedented and incorrect in law.

Damages for loss of earning is a "tort" remedy, only available in the case of a proven tort (*e.g.*, negligence, defamation, *etc*.). Breach of an employment contract (*e.g*., wrongful dismissal) is not a tort, but a contractual wrong. The remedy for a contractual wrong for which an employer is liable is damages based on reasonable notice of termination, not loss of future earnings. This important distinction was recognized by the Court of Appeal for Ontario in *Boucher v Wal-Mart Canada Corp*.[2]

> A claim for future loss of income can arise in an employment context where … the plaintiff has thus suffered a loss of any earning capacity because of the wrongdoer's tortious conduct.[3]

In this case, the court did not find RBC committed a tort. To the contrary, the court found that while RBC did not have just cause to terminate, the report it filed with the regulator was not defamatory, negligent, or a breach of fiduciary duty. A tort-based remedy for loss of earnings should therefore not have been

[2] 2014 ONCA 419.
[3] *Ibid,* at para 103, emphasis added.

available or awarded. Silva could have been (and was) compensated for the impact of the report to the regulator through the awards of aggravated and punitive damages.

We anticipate the Court of Appeal will intervene on this important point of law.

Wilsher v Olympic Wholesale Company Limited[4]

What happened?

Terry Wilsher was a 55-year-old night shift supervisor with 17 years of service who was dismissed for cause for alleged "fraudulent activity" and "time theft" after he topped up employee hours in the timekeeping system. Another employee reported him, and that employee went on to take over Wilsher's job after he was dismissed.

Once reported, an internal investigation took place. Wilsher did not attempt to conceal the adjustments as the practice of topping up night shift employee hours was a longstanding, unwritten institutional practice used by supervisors for many years. As well, the employer did not have any policy, procedure, or training manual regarding a supervisor's duties and responsibilities regarding the time management system.

Following his dismissal, the employer did not provide Wilsher with a positive reference. Wilsher testified his lack of references from his 17-year career at Olympic and being dismissed for time theft significantly impaired his ability to obtain new employment.

Court's decision

The court found there was no just cause to terminate Wilsher's employment. To the contrary:

- The investigation seemed "personal and targeted," "resembled an interrogation," and was held without notice, explanation, or due process, and in a biased manner
- There was no personal benefit to Wilsher, and no concealment or fraud
- No other supervisor or worker was questioned about the practice, the timesheet edits of no other supervisor was audited, and none of the workers who received a financial benefit as the result of the "topping up" practice were cautioned, disciplined, or reprimanded.

The court found Wilsher was entitled to 19 months' payment ($108K) in lieu of reasonable notice. However, the court then "extended" the notice period another 14 months ($80K), on account of the employer's "bad faith." In doing so, the court ignored a pillar of employment law laid down by the Supreme Court of Canada almost 20 years ago. Significantly, the court neither acknowledged nor explained its departure from this caselaw.

Expected Court of Appeal intervention

Extending the length of reasonable notice due to bad faith is often referred to as "*Wallace* damages," from the Supreme Court of Canada decision, *Wallace v United Grain Growers Ltd*.[5] However, *Wallace*

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[4] 2026 ONSC 3620.
[5] 1997 CanLII 332 (SCC).

damages are no longer the state of the law. In *Honda Canada Inc. v Keays,*[6] the Supreme Court overturned *Wallace,* stating it was "appropriate for this Court to reconsider the Wallace approach and make some adjustments." The Supreme Court stated:

> In cases where damages [regarding the manner of dismissal] are awarded, no extension of the notice period is to be used to determine the proper amount to be paid. The amount is to be fixed according to the same principles and in the same way as in all other cases dealing with moral damages. … damages will be awarded not through an arbitrary extension of the notice period, but through an award that reflects the actual damages.[7]

The court in *Wilsher* did not address *Keays*, whatsoever. We therefore anticipate the Court of Appeal will correct the trial judge's mistaken reliance on an overturned decision.

What should employers do awaiting these anticipated appeals?

1. **Clearly communicate and continue to enforce core workplace standards.** Do not read *Silva* or *Wilsher* as requiring tolerance of misconduct. Confidentiality, accurate records, regulatory compliance, honest time reporting, and supervisor integrity remain fundamental employment obligations. Have clear policies that set out expectations and consequences of a breach and apply them consistently.

2. **Strengthen investigation practices and documentation.** Assume a court or regulator will closely examine a workplace investigation, including who directed it, what evidence was gathered, what evidence was not gathered, whether the employee had a meaningful opportunity to respond, and whether alternatives to dismissal were considered. Be sure to take a balanced approach to the investigation, and that the investigator has sufficient training.[8]

3. **Be strategic when alleging cause.** A cause position should be reserved for cases where the evidence is strong, the misconduct serious, and the employer can demonstrate proportionality. Absent these factors, dismissal without cause may be the more prudent option to discuss with counsel.

To learn more and for assistance assessing workplace misconduct, conducting an investigation, or managing a termination decision, contact your Sherrard Kuzz LLP lawyer or info@sherrardkuzz.com.

Chambers Ranked

[6] 2008 SCC 39.
[7] *Ibid,* at para 59.
[8] **Sherrard Kuzz LLP will run a Workplace Investigations Workshop in September 2026. Register here.**