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February 21, 2024

Court Puts Bankers on Notice: “Exceptional” Integrity and Honesty Required

After a three-week trial, the Ontario Superior Court has held that the Royal Bank of Canada had after-acquired cause to terminate a senior banker, Aidan Mittra, and dismissed Mittra’s $10?million lawsuit.

In *Mittra v Royal Bank of Canada*, the Court accepted RBC’s arguments that Mittra deliberately misled RBC investigators and an RBC disciplinary chair about his personal investments.

The Court also made legally significant rulings regarding the duty of honesty required of senior bankers, choice of law provisions in foreign employment agreements, statutory severance entitlements, and the enforceability of “click to accept” employee bonus plans.

RBC was represented by Lenczner Slaght litigators Matthew Sammon and David Salter.

Background

Mittra was a Managing Director. His employment was terminated in 2019 following an RBC investigation and subsequent disciplinary proceeding regarding Mittra’s financial dealings with a subordinate. At the time of dismissal, Mittra was a RBC UK employee on a temporary assignment to Canada. He was provided with three months of “garden leave” under the terms of his UK employment agreement.

Mittra sought $10 million in wrongful dismissal damages, alleging among other things that the termination provision in his UK employment agreement was invalid and that RBC’s investigation was biased and unfair. Following examinations for discovery, RBC amended its Defence to plead after-acquired cause for the termination of Mittra’s employment, alleging that it had become apparent that Mittra deliberately misled RBC investigators and the RBC disciplinary chair about his investments. RBC also counterclaimed for tax overpayments made by RBC and received by Mittra.

The Court’s Ruling

The Court held almost entirely in RBC’s favour, in a well-reasoned 63-page decision:

- First, the Court enforced the termination provisions of Mittra's UK employment agreement, which provided for a maximum of 12 weeks' notice on the termination of Mittra's employment. Holding that the parties were entitled to select the law of the contract, the Court found that the termination provisions were valid under UK law and rejected numerous arguments by Mittra including his assertion that the contract violated the *Employment Protection for Foreign Nationals Act*.

- Second, the Court held that Mittra was not entitled to severance under Ontario's *Employment Standards Act*, which requires five years of service for eligibility, on the basis that his prior work for RBC in other jurisdictions did not count towards the five-year requirement. Mittra had worked in Ontario for just over two years at the time of dismissal, and had previously worked for RBC in various European locations for eight years. In the first decision considering the issue since the Divisional Court's 1998 ruling in *Singer v Tullet & Tokyo Forex (Canada) Ltd*, the Court held that Mittra was not entitled to *ESA* severance pay because he was not employed by RBC in Ontario for at least five years.

- Third, the Court held that RBC had cause to dismiss Mittra without notice, applying the doctrine of after-acquired cause to find that facts discovered by RBC after Mittra's dismissal justified cause at law. The Court made two rulings expected to be significant in future cases where employees assert cause on the basis of an employee's dishonesty, and particularly senior employees:
    - The Court held that Mittra was a fiduciary employee, finding that he had discretion to make significant financial decisions at a regulated bank. As a fiduciary employee, Mittra was subject to strict duties of loyalty and candour over and above the general duties of good faith and fidelity owed by employees to their employers.

    - The Court held that banking requires "absolute transparency, unimpeachable financial morality and complete objectivity," and that senior banking employees are therefore required to conduct themselves with an "exceptionally high level of integrity and honesty." The Court relied on two decisions by the British Columbia Supreme Court (*Carias v CIBC* and *Rowe v Royal Bank o*

Canada), making this the first ruling of its kind by an Ontario court.

- Fourth, the Court denied Mittra's claim for deferred bonus compensation on the basis that Mittra had accepted the terms of applicable RBC bonus plans, which Mittra had "clicked to accept" through an online compensation platform, even though Mittra claimed that he had not read the terms of the awards. The Court applied the Ontario Court of Appeal's recent decision in *Battiston v Microsoft Canada Inc* in the most recent decision enforcing these forms of award acknowledgments.

The Court awarded Mittra bonus compensation that was due to be paid before he was dismissed, while awarding a nearly equal amount to RBC for its counterclaim for tax overpayments to Mittra.