

**IN THE MATTER OF a Complaint of Unjust Dismissal,
Division XIV – Part III, CANADA LABOUR CODE, R.S. 1985, c. L-2;**

**AND IN THE MATTER OF an Adjudication under section 240 of
the CANADA LABOUR CODE, R.S. 1985, c. L-2;**

BETWEEN:

HARPREET BAWA

Complainant

- and -

ROYAL BANK OF CANADA

Respondent

AWARD

APPEARANCES:

Harpreet Bawa and Avinash Chaube for the Complainant

Michael G. McFadden and Brian Gottheil, counsel for the Respondent

Shekher Puri, Senior Business Relationship Manager (RBC)

Lisa Gallacher, Regional Vice-President (RBC)

BACKGROUND:

Harpreet Bawa's employment was terminated for cause by the Royal Bank of Canada ("RBC") on October 6, 2011. He had been working for RBC for a few months short of three years, and had just been promoted to the role of Senior Account Manager – Business/ Personal. The reason for the termination relates to one of the last tasks that he performed in his previous role as an Account Manager in one of the bank's branches in Brampton. Mr. Bawa opened a Tax-Free Savings Account ("TFSA") for a fellow employee at the branch, and transferred \$100 from her chequing account into the TFSA.

The Bank contends that Mr. Bawa did not have the other employee's consent to either open the account or transfer the funds, and that his actions breached the provisions of its Code of Conduct. Mr. Bawa asserts that he had obtained the employee's consent to do so during a conversation they had had a few weeks earlier, when he had opened a US savings account for her and her husband, at her request. The employee flatly denies ever having given Mr. Bawa consent to do so.

The matter came to the attention of Shekher Puri, the Bank's Regional Vice-President during a routine visit to the branch. A meeting was subsequently convened between Mr. Puri, Mr. Bawa, and his new manager, at which he was confronted with these allegations. While the evidence differs on what was discussed at the meeting, the parties agree that the managers followed the advice received from the bank's Advisory Services Group ("ASG") to send Mr. Bawa home for the day. The various steps that followed will be outlined in detail below, but at the conclusion of the Bank's investigation, Mr. Bawa was advised that his employment was being terminated for cause.

Mr. Bawa alleges that he was unjustly dismissed, and has brought a complaint pursuant to section 240(1) of the *Canada Labour Code*. I was appointed by the Minister of Labour under section 242(1) of the *Code* to hear and determine this matter. Neither party objected to my jurisdiction to adjudicate the matter.

A few pre-hearing teleconferences were held to discuss issues relating to pre-hearing production of documents and the evidence to be called by the parties at the hearing. Six

hearing dates were convened, at which the Bank called four witnesses – Shekher Puri, the Regional Vice-President of the West Brampton market at the relevant time, Sonia Ghanie, a Senior Account Manager for whom Mr. Bawa opened the account in question, Lisa Gallacher, the Regional Vice-President for the Mississauga market and Steven Noussis, Mr. Bawa's manager at the time of his termination. Mr. Bawa testified on his own behalf, and called his wife, Monica Bawa, as a witness.

THE EVIDENCE:

In addition to the testimony of the six witnesses mentioned above, several documents were referred to and relied upon by both parties. Although there were several points in contention between the parties, many of the relevant facts were not in dispute.

Mr. Bawa commenced his employment with the Bank on January 5, 2009, in the position of Account Manager. He initially worked at the RBC branch at Bovaird Drive and McClaughlan Ave, and was transferred to the branch on County Court Boulevard in Brampton in July of 2009. Mr. Bawa's job included a significant sales component, and there is no dispute that he performed well in that capacity. Mr. Bawa became the top sales performer in his category in the West Brampton region in 2010, and was nominated for a RBC Performance Award by his branch manager at the time, Rick Santucci.

While Mr. Bawa testified that Mr. Santucci had not been supportive of his performance for a period of time due to his refusal to accept a proposed transfer to a different branch in May 2010, these allegations have no bearing on the main issue before me, and I will consequently not review the evidence on that point.

Mr. Bawa was subsequently promoted to the role of Senior Account Manager - Business/Personal. His first day of work in that role was on September 19, 2011. He reported to Steve Noussis, the Sales Manager of Small Business.

Prior to his promotion, as an Account Manager, Mr. Bawa was eligible to participate in the bank's Short-Term Incentive ("STI") program, entitling him to receive various bonus

payments depending on the number of units - representing sales of banking products or referrals - he achieved. The Bank alleged that it was Mr. Bawa's interest in reaching the next level of bonus payment that motivated him to open the TFSA account and led to his termination. Mr. Bawa denied that allegation.

In any event, it is agreed that at the time that Mr. Bawa changed jobs in mid-September, he had achieved a total of 863 units during that fiscal year. Based on the documentation filed, this would place him twelve units above the threshold for Level 11, and thirty-seven units shy of Level 12, the highest level.

Events of September 17, 2011:

Mr. Bawa's last day of work as an Account Manager was Saturday, September 17, 2011. While the Bank did not concede that Mr. Bawa was scheduled to work that day, I find that the documents filed, including a copy of the Work Schedule for all of the Personal Bankers at his branch, support his statement that this was his last scheduled day of work at the branch. The parties agree that he opened Tax-Free Savings Accounts ("TFSAs") for three of his co-workers on that day - one for Jagdeep Sacha, a mortgage specialist, one for Sonia Ghanie, and one for a Customer Service Representative ("CSR") named Ferdinand. Ferdinand was also at work on September 17, and signed the account application form.

As neither Mr. Sacha nor Ms. Ghanie were at the branch that day, Mr. Bawa prepared their TFSA account applications, but was not able to obtain their signatures on the forms. A further TFSA application was prepared for Mr. Sacha's wife. The Bank does not take issue with the accounts opened on behalf of Mr. Sacha and his wife, who both subsequently signed the required forms and advised that they had provided consent to Mr. Bawa to open the accounts. It is the TFSA that was opened on behalf of Ms. Ghanie that is at the crux of the dispute between the parties.

Mr. Bawa and Ms. Ghanie were both account managers at the County Court Boulevard branch. Ms. Ghanie has been employed by RBC for approximately 35 years, and had been at the branch for over ten years. There was differing evidence about whether they

were simply colleagues who assisted each other from time to time (her version), or whether they were good friends and supportive co-workers (his version). In any event, the evidence establishes that Mr. Bawa and Ms. Ghanie occasionally assisted one another with work matters, and took care of each others' banking needs.

It is not disputed that Mr. Bawa had opened a Home Equity Line of Credit for Ms. Ghanie's daughter and son-in-law, some time prior to the events in question. Ms. Ghanie acknowledged that she had also asked him to prepare a letter in mid-August 2011, confirming that sufficient funds were in her RBC account to cover the deposit for a property that she and her husband had purchased in Florida. Mr. Bawa had also opened a US dollar savings account for Ms. Ghanie and her husband on August 25, 2011, a few weeks prior to the events in question.

Telephone records were filed during the course of the hearing, indicating that Mr. Bawa called Ms. Ghanie on her cell phone from the branch on September 17, the day that he opened the TFSA. Ms. Ghanie did not answer the call. This is not disputed by the Bank: Ms. Ghanie testified that she recalled seeing the call come in on her phone, but that she did not answer, as she was with her mother at the time. When Mr. Bawa was unable to reach her, he completed the paperwork required to open a TFSA account in her name, and placed the documents in her employee folder. He attached a yellow sticky note to the documents that states - "Hi Sonia, pls. sign + put it in BCO. Pls. don't ask ques. I'll explain. Jolly". Mr. Bawa is referred to as 'Jolly' by his friends and colleagues, and the parties explained that 'BCO' is the acronym used for Branch Compliance Office.

Mr. Bawa testified that he opened the account for Ms. Ghanie despite the fact that he was unable to reach her on that day, as she had requested that he open a TFSA for both her and her husband some three weeks earlier, when he had opened the US dollar savings account for her. Mr. Bawa alleged that while reviewing Ms. Ghanie's "Client Profile" in the course of opening the US dollar account, he noted that she did not have a TFSA with RBC. He recalled her explaining that she had opened a TFSA with ING, as they offered a slightly higher interest rate. He testified that after a brief discussion, she agreed to his suggestion that the funds in her ING account be transferred to a new TFSA with RBC.

Mr. Bawa stated that he was not able to complete the transaction at that time, as he had received a request to meet with a "walk-in client". He recalled advising Ms. Ghanie that he would open the account and prepare the forms required to have the funds in the ING account transferred shortly. He explained that he then became busy with various pending deals for other clients. He recalled that Ms. Ghanie had reminded him to open the account a few days later as she passed him in the hallway, and he assured her that he would do so.

Mr. Bawa testified that he finally got around to filling out the required paperwork for the account on September 17, his last day at the branch. He also transferred \$100 from Ms. Ghanie's chequing account to the TFSA. He explained that he had called her that afternoon in order to obtain details of the ING account that she had, so that he could complete the required forms for the transfer of funds. He stated that he had also wanted to contact her husband, in order to obtain his consent to open a TFSA. When Ms. Ghanie did not return his call, he completed the application form for her account, and left the documents in her folder along with the sticky note described above.

When asked what he had meant by the notation - "please don't ask questions, I'll explain", Mr. Bawa stated that he had wanted to convey to Ms. Ghanie that he had not been able to either complete the forms required for transferring the funds from the ING account to the new RBC account, or open a TFSA for her husband. He explained that he had hoped that his 'casual note' would convey that he would explain this to her when he had the chance.

Phone call – September 18th:

Ms. Ghanie testified that when she saw a call come in from Mr. Bawa on September 17, she assumed that he was calling to advise her that a package had arrived for her at the branch. She explained that she had expected to receive the keys to her new Florida townhouse when she was at work on the Friday before, but that they had not arrived. She returned his call on the following day, which was a Sunday. The phone records filed indicate that Ms. Ghanie spoke to Mr. Bawa at his home for approximately two and one-half minutes. Ms. Ghanie testified that the phone connection was not clear, and that she was at the mall with her mother and her aunt when she made the call.

Ms. Ghanie acknowledged that Mr. Bawa advised her at that time that he had opened a TFSA account for her. She initially testified that she “didn’t think twice about it”, but when asked specifically whether the news that Mr. Bawa had opened the account for her came as a surprise, she stated that it did. Ms. Ghanie testified that Mr. Bawa had not, however, mentioned anything about transferring \$100 from her chequing account to the TFSA. She stated that she did not keep much money in that account, and that she would have immediately worried about whether there was enough money in the account to cover that withdrawal.

Under cross-examination, Ms. Ghanie stated that when Mr. Bawa advised that he had opened the account for her "it didn't phase me". When asked whether she had told him that she did not want the account, or that he should close it, she admitted that she did not do so. Ms. Ghanie testified that she did not recall Mr. Bawa mentioning that he was unable to open an account for her husband, or that he was missing the details required to complete the transfer forms to facilitate the transfer of funds from her ING account.

Mr. Bawa's recollection of the September 18 phone call was quite different than that of Ms. Ghanie's. He asserted that they had a clear connection, and that he could hear everything that Ms. Ghanie had said. He testified that he advised Ms. Ghanie both that he had opened the TFSA account for her, and that he had transferred \$100 into it from her chequing account. He also recalled explaining that he had not opened an account for her husband, and that he had not been able to complete the forms for the funds to be transferred from her ING account. He stated that Ms. Ghanie told him that she would sign the account documents on Monday when she was at work, and would forward them on to "compliance".

Events of the week of September 19th:

Monday, September 19 was Mr. Bawa's first day of training for his new job as a Senior Account Manager - Business/Personal. In this role, he no longer had contact with the clients that he had served while he was an Account Manager. It is not disputed that a former client called him on that day, requesting a refinancing of her mortgage and an

extension of the amortisation period, and that he called Ms. Ghanie to refer the matter to her. Mr. Bawa testified that he asked Ms. Ghanie at that time whether she had signed the TFSA documents, and that she responded that she had not yet done so, but would sign them before she left work that day.

In her evidence, Ms. Ghanie acknowledged that she had spoken to Mr. Bawa that day, but denied that he had mentioned the TFSA during the call. She admitted that she did not tell him at that time that she did not want the new account, or that she had not provided consent to have it opened.

It is common ground that Ms. Ghanie did not sign the account application forms all week. While the evidence of the Bank's witnesses regarding the timing requirements imposed by RBC's Compliance Department for obtaining signatures on account applications was vague, no one seriously challenged Mr. Bawa's contention that applications for new accounts were required to be signed by the client within forty-eight hours of the account having been opened. If a signed application form was not submitted to 'match' the new account opened, the Compliance Department would contact the Account Manager who had opened the account, as well as the Branch Manager (who also acts as the Branch Compliance Officer or "BCO" in this regard), and require that the matter be rectified by either having the document signed, or the account closed.

The parties agree that Mr. Bawa was not contacted by anyone from RBC compliance in this regard all week. It was also agreed that Ms. Ghanie had taken a compliance course and had been the Assistant BCO at the branch, meaning that she was responsible to ensure that all compliance requirements were met when the Branch Manager/ BCO was absent. Mr. Bawa contended that Ms. Ghanie would accordingly have been well aware of the above requirements for account documents to be signed and submitted quickly, and repeatedly questioned why she would have "sat on" the documents for as long as she did. Ms Ghanie stated, however, that she had not been involved in compliance activities for approximately two years prior to the events in question, and that she was unsure of the compliance requirements relating to TFSA accounts.

When asked why she had held on to the TFSA account documents without either signing them or calling Mr. Bawa to advise that she did not want the account, Ms. Ghanie explained that she had been uncertain about what to do. She testified that she vacillated between signing the documents and not doing so, and wondered whether she should approach Mr. Bawa (presumably to ask him to close the account) or speak to Mr. Santucci, the Branch Manager, to advise him what had happened. She stated that she “was not a snitch”, and that she had ended up simply putting the documents aside, and concentrating on her work. She testified that she was not approached by Mr. Santucci (who was the Branch Compliance Officer) or anyone else with compliance concerns regarding the unsigned account documents.

Ms. Ghanie also testified that talk was circulating around the branch that Mr. Bawa had opened several accounts on his last day of work without obtaining signatures on the application forms, in order to obtain “units” under the STI bonus plan. She testified that Shekher Puri appeared at her office on Friday afternoon, as she was considering what she should do about the TFSA forms that Mr. Bawa had left for her. Ms. Ghanie explained that Mr. Puri routinely visited the branches to discuss various matters with the account managers, but that on that day, she had the feeling that Mr. Puri was conducting an investigation. She wondered whether word had got out to him that Mr. Bawa had opened several accounts for co-workers on his last day.

Ms. Ghanie recalled that Mr. Puri started their conversation by stating “I want the truth”. He asked her whether she was involved in a practice that he had heard about at the branch, whereby a CSR would book an appointment for a client to see a personal banker, and if a product or service was purchased during the meeting, both employees would receive credit for the sale. She suggested that Mr. Puri seemed concerned about what he perceived to be an abuse of the STI system.

Ms. Ghanie testified that she told Mr. Puri that she was not involved in that practice. She then mentioned that she did not understand why anyone would open an account for another person without their knowledge, and showed him the TFSA documents that Mr. Bawa had prepared, that she had not signed. The sticky note that Mr. Bawa had scribbled

out was still attached to the forms. She told Mr. Puri that she had not authorized Mr. Bawa to open the account and that he had done so without her knowledge. Mr. Puri took the documents from her and left her office.

Mr. Puri also testified at the hearing. Interestingly, he did not mention anything about investigating the issue of CSR's booking appointments with personal bankers. He stated that after being advised by Ms. Ghanie about the TFSA opened by Mr. Bawa, he approached the branch manager, Mr. Santucci, to ask whether he knew anything about this. He recalled that Mr. Santucci advised him that Mr. Bawa had opened several TFSA's for employees in the branch on both the previous Friday and Saturday, and that several of the account applications did not have signatures on them. Mr. Puri also spoke to the manager who supervises all of the CSR's in the branch, who advised him that Mr. Bawa had spent a lot of time on his last day talking both to the CSR's and various clients who came into the branch about opening TFSA's.

Mr. Puri testified that he also spoke to Mr. Sacha, the mortgage specialist for whom Mr. Bawa had opened a TFSA on that day. Mr. Sacha told him that Mr. Bawa had opened TFSA accounts for him and his wife, but advised that they had both provided consent to Mr. Bawa to do so.

Mr. Puri made notes recording the gist of the discussions he had with various people about this matter on that day, including Ms. Ghanie and Mr. Santucci. Copies of the notes were filed into evidence. The notes contain a list of seven accounts that Mr. Santucci apparently told Mr. Puri had been opened by Mr. Bawa, either on Friday or Saturday (his last day of work), with "missing" signatures. Mr. Puri testified that he then called Mr. Noussis, Mr. Bawa's new manager, to advise him of the allegations and that Mr. Bawa "did something very wrong".

Investigation meeting – September 26th:

Mr. Bawa was called to a meeting with Mr. Puri and Mr. Noussis on the following Monday. While there was some discrepancy between the Bank's witnesses and Mr. Bawa about what exactly was discussed at the meeting, and whether or not Mr. Noussis took

notes recording their discussion, it is agreed that Mr. Puri confronted Mr. Bawa with having opened the TFSA for Ms. Ghanie, and transferring \$100 into it from her chequing account, without her consent. Mr. Bawa insisted that he had obtained her consent to do so a few weeks earlier, when he had opened the US dollar account for her and her husband.

Mr. Puri testified that he then asked Mr. Bawa about the yellow sticky note that he had attached to the account forms that he left for Ms. Ghanie. He suggested that the instruction “don’t ask questions” was not consistent with Ms. Ghanie having provided prior consent to open the account, and asked for an explanation. He stated that Mr. Bawa’s response did not “coincide with logic”. Mr. Puri also asked Mr. Bawa about his having opened several accounts on behalf of other co-workers on his last day of work, and testified that Mr. Bawa admitted that he had opened the accounts so that he could “increase his units” under the STI program.

After the above issues were discussed, Mr. Bawa was asked to leave the room while Mr. Puri and Mr. Noussis called the bank’s Advisory Services Group (“ASG”). Mr. Puri explained that this group provides employees and managers with guidance on the Bank’s Human Resources policies and issues. They followed the advice received from ASG to send Mr. Bawa home for the day, and ask him to return to work the following day, pending the results of an investigation.

Mr. Puri explained that he then called Ms. Ghanie to advise her that Mr. Bawa had insisted that she had provided her prior consent to open the TFSA. He recalled that Ms. Ghanie clearly denied that she had done so, explaining that she already had a TFSA with ING, with pre-authorised monthly withdrawals. Mr. Puri stated that after these discussions he concluded that Mr. Bawa had lied to him and that he had in fact opened the TFSA account without Ms. Ghanie’s consent, and had also transferred the funds out of her chequing account without receiving her consent to do so. He explained that this was an extremely serious matter, and that the integrity and trustworthiness of bank employees is very important, as they are entrusted with handling large sums of money.

Mr. Bawa testified that he was surprised to be called into the meeting with Mr. Puri and Mr. Noussis, and that he initially sensed from Mr. Puri's voice and manner that he was angry with him. He recalled Mr. Puri stating that he had already "done his homework" and that he needed to hear the truth from him. He described Mr. Puri's tone as being rough and disrespectful. He asked Mr. Bawa how many TFSA's he had opened on his last day of work at the branch, and Mr. Bawa explained that he had opened two accounts for colleagues and two or three others for outside clients. Mr. Puri asked whether he had received consent from these people to open all of them, and Mr. Bawa responded that he had.

Mr. Bawa testified that when he explained that Ms. Ghanie had provided her consent to open the account a few weeks prior to him having done so, Mr. Puri was not satisfied with his answer and kept repeating that he needed to hear the truth. Mr. Bawa testified that it seemed that Mr. Puri was more intent on pushing him into saying that he had not obtained her consent than on hearing his side of the story. He felt that he was being accused of having done something bad, and said that he went home feeling "big stress", given that he had just started a new job, and had worked very hard to get promoted.

Mr. Noussis was also called as a witness by the Bank. He provided seven pages of handwritten notes that he claimed represented an accurate reflection of the discussion held on that day between Mr. Puri and Mr. Bawa. Mr. Bawa disputed that Mr. Noussis had taken notes at the meeting. The notes outline Mr. Bawa's explanation that he had received consent from Ms. Ghanie prior to having opened the TFSA account, and Mr. Puri's repeated suggestions that Mr. Bawa tell him the truth. They also contain a few references to Mr. Bawa having stated that he was "running short on units" and that he was trying to "bridge" his units. At one point the notes record that Mr. Puri asked him how many units he was short, and Mr. Bawa responding "fifteen or sixteen".

Mr. Bawa insisted in his testimony that he had not mentioned anything about his units during the course of the meeting, and that he was shocked to have seen reference in the notes to him having said that he was fifteen units short.

Evening visit to Ms. Ghanie's home:

Mr. Bawa stated that he told his wife about the meeting with Mr. Puri when he got home, and that he was worried about what might happen. He stated that she suggested that he discuss the matter with Ms. Ghanie. He explained that it was his wife's birthday, and that they had planned to go out to dinner that evening with their two children. He decided to call Ms. Ghanie, with the hope of speaking with her before going to dinner.

Mr. Bawa testified that he called Ms. Ghanie several times, and left voice mail messages asking her to call him back. When he did not get a response, he drove to her home, and rang the doorbell. Her husband answered the door, and advised that Ms. Ghanie had gone to visit her mother and was not at home. Mr. Bawa decided to take his family to eat at a restaurant close to her home, so that he could drop by Ms. Ghanie's home after dinner to see if her car was in the driveway. When he did not see her car, he drove to a Tim Horton's in the area, and had coffee and dessert. After driving by Ms. Ghanie's home a few more times, he decided to ring her doorbell one last time, but there was no answer.

Ms. Ghanie then called Mr. Bawa on his cell phone. When he told her he had an urgent matter to discuss with her, she invited him in. Both parties estimated that it was approximately 10:30 pm at this point. Mr. Bawa and his wife, Monica, sat in Ms. Ghanie's living room, while their children remained in the car, sleeping. Mr. Bawa advised that he had been called into a meeting with Mr. Puri and asked about the TFSA that he had opened for her, and was sent home before the end of the day.

Ms. Ghanie's evidence on what transpired during the visit differs from that of the Bawas on one material point: Both Mr. and Ms. Bawa both testified that Ms. Ghanie advised them that she had told Mr. Puri that she had not provided consent to open the TFSA, but admitted that that was "a mistake". They recalled her explaining that she had only done so because he seemed very angry when he saw the unsigned account documents. The Bawas further testified that Ms. Ghanie apologized for having done so. In her evidence, Ms. Ghanie denied that she had apologized or admitted to having done anything wrong. She insisted that when she had told Mr. Puri that she had not given consent to Mr. Bawa to open the TFSA, she was telling the truth.

All parties agree that at some point in the discussion, Monica asked whether anything could be done to save Mr. Bawa's job. Mr. Bawa recalled Ms. Ghanie stating that she knew Mr. Puri well, and that if Mr. Bawa apologized, he "won't be too hard on you". Ms. Ghanie testified that Monica had pleaded with her to call Mr. Puri and tell him that she had provided consent to open the account during a previous discussion, but that she advised that she would not do so.

Interestingly, the parties agree that when Mr. and Mrs. Bawa left Ms. Ghanie's home, she walked down her front steps with them, and that after Mr. Bawa went into the car, Ms. Bawa and Ms. Ghanie prayed together. Ms. Bawa testified that Ms. Ghanie was crying and apologizing for "her mistake" of having lied about not having provided consent to Mr. Bawa to open the account, and that she was consoling her and saying that "God would forgive her". In contrast, Ms. Ghanie recalled that she said that "God would take care of everything" and that they just had to pray.

Mr. Bawa's confession (September 27):

Mr. Bawa called Mr. Puri on the following day, and left a message on his voice mail admitting that he did not have Sonia Ghanie's consent to open the TFSA account, and confessing to having lied at the meeting on the prior day. A transcript of the message left was filed by the Bank, and Mr. Bawa acknowledged that it was accurate. In it, he alludes to being scared during the meeting he had with Mr. Puri and Mr. Noussis, stating that Mr. Noussis was his new boss and that he is "not too open with him". He states that he was "totally confused and didn't know what to do". He explains that he needs his job very badly, but that "I'm going to need to face any consequences of this mistake. I will accept that. So I will accept that from my heart. I know I did a mistake and plus I lied to you. Sorry, I confess again...sorry Shekher".

Mr. Puri testified that he shared this message with Mr. Noussis and Lisa Gallacher, who was about to assume his role. He also contacted the Advisory Services Group and advised them that Mr. Bawa had confessed to lying and admitted to not having obtained consent to open the TFSA for Ms. Ghanie. Mr. Puri added that Mr. Bawa's confession further

confirmed his position that he could not trust him, and that there was a “major integrity issue”.

Mr. Bawa testified at length about why he made the call and left the above message. He stated that he was barely able to sleep that night, after being at the meeting with Mr. Puri and visiting Ms. Ghanie at her home. He was very worried about losing his job, given the financial effect it would have on his family. He explained that his wife was only working part-time, and that his daughter has special medical needs. He testified that he kept thinking about Ms. Ghanie’s suggestion that he apologise to Mr. Puri, and the fact that Mr. Puri kept repeating at the meeting that day that he “wanted to hear the truth”, yet did not seem to accept what he was saying. He explained that in the South Asian culture, people in subordinate positions are expected to be deferential to their superiors, and that he felt that as both he and Mr. Puri were from that community, Mr. Puri likely expected him to respect his authority.

Mr. Bawa explained that while he did not want to confess to something that he had not done, he concluded that if he admitted to having acted wrongly, he might not lose his job and would possibly only get ‘a warning’. He reasoned that he had a clear employment record with the Bank, and was about to receive an award for his sales performance at the upcoming RBC gala event, and decided that in the circumstances, it might be better for him to assume the blame for what had happened.

RBC gala – September 28:

Mr. Bawa testified that the annual RBC employee gala was scheduled to take place on September 28th, after which he had planned to take a few days of vacation. Given what had transpired earlier in the week, he called Mr. Noussis to ask whether he should attend the gala, and what his “status” was. He recalled Mr. Noussis telling him that everything was fine, and that Mr. Puri was happy to have received his apology. Mr. Noussis suggested that he attend the gala, and told him to take his vacation, as planned. Mr. Bawa explained that he was happy to hear that, and concluded that everything had been resolved.

In his testimony, Mr. Noussis acknowledged that he had spoken to Mr. Bawa and advised him to attend the gala and take his planned vacation, but denied telling him that everything was fine.

Mr. Bawa stated that he went to his former branch on County Court Boulevard that evening, and traveled to the gala with his former colleagues. He recalled being approached by Ms. Ghanie while they were at the branch, and her asking about the outcome of the discussions. He told her that it “looked like everything was fine”, and that Mr. Noussis had told him not to worry about anything. He testified that Ms. Ghanie seemed very happy to hear this, and that she hugged him in front of everyone there. He recalled her saying that God had listened to their prayers, and that she went to her office at that point and called his wife to tell her how happy she was to hear that news.

October 6 termination meeting and letter:

Mr. Bawa stated that a few days after returning from his vacation, he received a message from Mr. Noussis requesting that he meet with him at his office. Mr. Bawa assumed that they would be discussing his training schedule, but when he arrived at the meeting Ms. Gallacher was also there. He testified that to his great surprise, he was told that the Bank had completed its investigation into his actions on September 17, and had decided to terminate his employment for cause. He was given a letter of termination and walked out of the office.

Monica Bawa testified that she received a call from Ms. Ghanie later that afternoon, saying that she felt sorry that Mr. Bawa had lost his job, and that she would pray that things would get better in their lives. Ms. Bawa also recalled that Ms. Ghanie had called her a few times before that, after hearing from Mr. Bawa that everything had turned out well, to express how pleased she was that it all had been sorted out. She also recalled Ms. Ghanie calling her a few times after Mr. Bawa was let go from the bank, expressing her sympathy.

Ms. Ghanie was the second witness called by the Bank, and therefore provided her evidence prior to Ms. Bawa doing so. She was not asked about whether she had made these calls to Ms. Bawa, and was not called to provide any reply evidence.

The letter provided to Mr. Bawa at the meeting confirms that his employment is being terminated for cause “as a result of your admission to opening a Tax Free Savings Account and debiting \$100 from a colleague’s staff account without authorization”. It goes on to state -

Your actions, which you admittedly did to reach the next compensation level, demonstrate a serious lack of good judgment. Of further concern is the fact that you have acted contrary to our Code of Conduct, and specifically Principle 7 – Integrity: Integrity of Records and Employee Character. Through your actions, we have lost confidence in your honesty, integrity and trustworthiness.

The letter is signed by Steven Noussis. However, Mr. Noussis advised in his evidence that the letter was actually prepared by someone in the ASG, and further, that he played no role in the decision to terminate Mr. Bawa’s employment.

Bank’s decision to terminate:

Mr. Puri testified that after he received Mr. Bawa’s confession, he assisted the ASG in the preparation of a document entitled “Dismissal with Cause Summary”. A copy of this document was filed at the hearing. Mr. Puri explained that this is routinely completed in cases where employees are dismissed for cause, and that it outlines the key points and basis for the bank’s decision. It is generally signed by the employee’s manager who “recommends” termination, as well as the executives at the next two levels up. As Mr. Puri was changing roles around this time, his name does not appear on the document. Mr. Noussis is noted as the manager recommending termination, and Ms. Gallacher, the new Regional Vice-President of Mr. Bawa’s region, is noted as “concurring”.

The Summary document refers to Mr. Bawa having opened TFSA’s for two of his co-workers, without having obtained signatures on the application forms. There is a reference to one of the employees (presumably Mr. Sacha) stating that he had wanted to give business to Mr. Bawa. It states that Mr. Bawa opened a TFSA for another employee

(presumably Ms. Ghanie) and transferred funds from her chequing account without her permission. It also states that the Branch Manager was advised that Mr. Bawa was going around the branch on his last day of work there “asking staff to open up a TFSA”.

The document goes on to say that although Mr. Bawa denied any wrongdoing at a meeting held to discuss the matter, he subsequently admitted to not having received consent to open the account. Notably, it states that Mr. Bawa claimed that he had opened the accounts in order “to reach the next incentive threshold for sales before he left his position”.

I note that despite the various points outlined on the Dismissal Summary, the only reason provided for Mr. Bawa’s termination in the letter that he received on October 6th relates to the opening of Ms. Ghanie’s TFSA. While it was clear from the evidence provided by the Bank’s witnesses that some of his other actions – such as standing behind the CSR’s on his last day to gain more access to potential clients or asking other staff in the branch to open TFSA’s - were discussed around the time the decision was made to terminate his employment for cause, these were not mentioned in the termination letter provided to Mr. Bawa. No evidence was tendered by the Bank to explain this discrepancy.

It is clear from the evidence provided by RBC that the decision to terminate Mr. Bawa’s employment was based on the assumption that he had opened the various accounts on his final day of work at the branch in order to reach the next level of compensation in the STI program. This is mentioned in both the Summary document and the termination letter. Yet, it is also clear from the testimony provided by Mr. Puri, Mr. Noussis and Ms. Gallacher, that none of them checked to determine whether Mr. Bawa’s efforts in this regard would have allowed him to achieve the next level of compensation. No evidence was provided to suggest that anyone at the ASG had verified this point.

Mr. Bawa’s evidence on this point was clear – he testified that he knew shortly before September 17, his last day at the branch, that he had reached 851 units and had therefore surpassed the Level 11 target. While counsel for the Bank challenged Mr. Bawa on this point quite aggressively on cross-examination, his evidence was not shaken. It was

common ground that each TFSA opened by Mr. Bawa would get him one additional unit. His average ‘output’ over the previous few quarters was approximately 19 units per week. In keeping with that, the total number of units achieved by Mr. Bawa for the month of September – in which he worked a few days shy of three weeks – was 60 units.

In order to reach Level 12, and obtain the next “bonus payout”, Mr. Bawa would have had to reach 900 units. That represented a further 37 units beyond the 863 he had achieved by the end of his last day at the branch. Mr. Bawa stated that while he was always thinking about making sales, he knew that it was simply impossible for him to achieve that level of sales before leaving his job as Account Manager.

After acquired cause – harassment allegation:

RBC also alleges that Mr. Bawa harassed and intimidated Ms. Ghanie, and that this only came to light after the decision was made to terminate his employment. Counsel advised that the Bank relies on this evidence in support of its position that Mr. Bawa’s dismissal was justified.

The evidence indicates that Ms. Ghanie and Mr. Bawa exchanged text messages on October 12, 2011, approximately a week after his employment was terminated. Ms. Ghanie sent the first message, stating that while she sympathized with Mr. Bawa and his wife, she had been instructed by RBC not to have any contact with either of them “until further notice”. It appears that Ms. Bawa saw this message on her husband’s phone and responded to it with a longer message, suggesting that Ms. Ghanie was responsible for “Jolly’s situation”, stating that it was due to her “wrong statement that bread has been snatched from my kids mouth”. She also referred to God as being just, and that Ms. Ghanie should be “prepared to answer the lord when you will be face to face with him”.

Ms. Ghanie testified that she could not recall what had prompted her to send her message, stating that her husband may have advised her to do so. She explained that she was very upset when she received Ms. Bawa’s response, and felt threatened. She called Mr. Puri the next day to tell him about it, and also told him at that time that Mr. and Mrs. Bawa had come to her home late at night on September 26th to discuss what had happened at the

meeting he had with Mr. Puri earlier that day. She testified that she had not previously mentioned the Bawas' visit to her home that evening to Mr. Puri or anyone at the Bank, as Mr. Bawa had asked her not to.

Mr. Puri was on his way to the airport, when he received Ms. Ghanie's call. He recalled that he was about to leave for India with his family for a few weeks. He told Ms. Ghanie that he would let Ms. Gallacher know what had happened. A few hours later, Ms. Gallacher and another employee arrived at the branch and met with Ms. Ghanie and Mr. Santucci, the Branch Manager. Ms. Ghanie testified that she showed them the text messages, and also explained that Mr. Bawa had called her repeatedly and essentially "stalked her" on the evening of September 26th, until she felt that she had to invite him in to her home to discuss the issue.

Ms. Ghanie testified that at the managers' suggestion, she went to the police station and filed a complaint with the police. She confirmed that she had no further contact with either Mr. Bawa or Ms. Bawa after that.

Impact of termination on Mr. Bawa:

Mr. Bawa testified that the termination of his employment from the bank has had a devastating impact upon his life and his career. He stated that despite having made many efforts to find another job, he had not been able to do so by the time the hearing was completed in January 2013. He testified that his termination from RBC for cause, and the fact that a Notice of Termination form was filed by the Bank with the Ontario Securities Commission has prevented him from obtaining work in the financial industry. He explained that he has also applied for various sales and marketing positions in other industries, but that the notation in his RBC file that he is "not rehireable" and the lack of a reference from a manager at the bank has thwarted his attempts to find another job.

When the hearing convened on the final day scheduled in order to hear the parties' closing submissions, Mr. Bawa requested to "reopen" his case in order to provide more evidence on his recent efforts in finding employment. He explained that he had written a certification examination in order to obtain a sales position at a Honda car dealership, and

was hired by the dealer in December 2012. He stated that in order to work as a sales person in that industry, a license must be obtained from the Ontario Motor Vehicle Industry Council. He testified that he applied for this license, but subsequently received a call from the administrator processing his application asking why he had left RBC. When he explained the reason, she told him that he would have to file a disclosure statement with the Council before his license could be approved, setting out the details of why he had left the bank. This statement was required to be signed by the dealership.

Mr. Bawa testified that he discussed the issue with the Human Resources manager at the Honda dealership, but that she would not agree to sign a disclosure statement with this information. He stated that the only option at that point was for him to resign from that job, which he did. He added that he had approached two other car dealerships, with the same result.

Finally, Mr. Bawa spoke of experiencing stress, anxiety and insomnia as a result of his termination from RBC. He filed a note from his family doctor attesting to the fact that he had been in excellent emotional health prior to this incident, but that he had complained of “stress, anxiety, insomnia, feelings of being overwhelmed and has had difficulty coping with his present situation” since his dismissal.

ANALYSIS & FINDINGS:

After a thorough review of all of the evidence presented, I have concluded that Mr. Bawa was unjustly dismissed from his position at RBC. While I agree that a high standard of honesty and integrity is expected of bank employees, and that an employer’s actions in dismissing an employee must be considered against that backdrop, I do not find that Mr. Bawa’s actions, in the context of the surrounding circumstances, justify his dismissal for cause.

While the evidence of the six witnesses called at the hearing addressed several points, the crux of this dispute comes down to whether or not Ms. Ghanie provided her consent to Mr. Bawa to open a Tax-Free Savings Account for her when they discussed his opening a US dollar account for her and her husband on August 25, 2011. I have considered both

parties' submissions on why either Ms. Ghanie's evidence (as asserted by the bank) or Mr. Bawa's evidence (as he contended) should be preferred on this threshold question, and I am left with doubts about the veracity of both witnesses' testimony on this point.

Counsel for the Bank urged me to accept Ms. Ghanie's evidence over that of Mr. Bawa, because if she had given her consent to open the TFSA, it makes no sense for her to have waited as long as she did without signing the account application. While the logic of that argument is appealing, it still leaves the question of why Ms. Ghanie did not tell Mr. Bawa on either of the two opportunities she had, during their telephone conversations on both September 18 and 19, that she did not want the account unanswered.

Ultimately, based on the evidence I heard regarding the surrounding circumstances and subsequent events, I conclude that if Ms. Ghanie did not provide express consent to Mr. Bawa to open the TFSA account for her, she impliedly consented to it. I therefore find that his act of opening the account does not justify the bank's decision to terminate his employment for cause.

While Mr. Santucci and Mr. Puri initially focused on the other accounts opened by Mr. Bawa on that day without "signatures", and Ms. Gallacher expressed concern in her testimony about Mr. Bawa reportedly standing behind the CSR's and asking customers who walked into the branch whether they wanted to open accounts, it is clear from the termination letter provided to Mr. Bawa that it was his actions in relation to the opening of Ms. Ghanie's TFSA that was the sole basis for the termination of his employment.

My findings are based on the following evidence:

Mr. Bawa's awareness of Ms. Ghanie's ING account

Mr. Bawa testified that while reviewing Ms. Ghanie's Client Profile during their discussions on August 25th, he saw that she did not have a TFSA with RBC. He asked her about that, and recalled that she advised him that she had one with ING, as ING paid a slightly higher interest rate. Mr. Bawa recalled suggesting that she transfer the funds in that account to a new TFSA with RBC, and that she agreed to do so. He stated that he

was not able to open the account and facilitate the transfer of funds at that time, as he received a message that a walk-in client was waiting for an appointment.

Ms. Ghanie testified that she had never discussed opening a TFSA with Mr. Bawa at all. She acknowledged that she did have a TFSA with ING. When asked how Mr. Bawa would have known that she had an account with ING if they had never discussed the issue, Ms. Ghanie could not provide an answer. Under cross-examination, she suggested that Mr. Bawa might have found this out during the litigation process, when the Bank's lawyers set out its position.

In fact, Mr. Bawa referenced his earlier discussion about Ms. Ghanie's ING account in the Complaint he filed with HRSDC on October 26, 2011, a few weeks after his employment was terminated. He would not have had access at that point to the Bank's reply to his Complaint, drafted by counsel, which was submitted to HRSDC in December 2011. In any event, nothing is mentioned about Ms. Ghanie's ING account in that submission. Given the above, I simply cannot accept Ms. Ghanie's statement that she never discussed this matter with Mr. Bawa, and I conclude that the parties had in fact engaged in a discussion about Ms. Ghanie's TFSA prior to September 17th.

Communication between Mr. Bawa & Ms. Ghanie – Sept 17th to 19th

Mr. Bawa opened the TFSA for Ms. Ghanie on September 17th, his last day of work at the County Court branch. It is common ground that Ms. Ghanie was not working at the branch on that day, and that Mr. Bawa tried to call her. When she did not answer, he prepared the account documents for her TFSA, and left them in her employee folder, with the yellow sticky note attached. The note said – "Pls. sign + put in BCO. Pls. don't ask ques. I'll explain". Mr. Bawa testified that he had meant to convey that he would explain to her when he had the chance that because he had not been able to reach her, he did not open an account for her husband, and could not complete the forms required for the transfer of funds from the ING account. He referred to it as a casual note left by him for a colleague who he thought of as his "best buddy".

While this note clearly struck Mr. Puri as suspicious, Ms. Ghanie was not questioned about her impression of it, or what she took those words to mean. There is simply nothing in her evidence suggesting that the note itself, or specifically the reference not to ask questions, sounded suspicious or bothered her in any way.

It is not disputed that Ms. Ghanie returned Mr. Bawa's call the next day, reaching him at home on a Sunday. While she testified that she had wanted to find out whether the package she had been expecting with keys to her Florida townhouse had arrived at the branch, she acknowledged that Mr. Bawa told her at that time that he had opened a TFSA for her. While she testified that she was surprised to hear that he had done so, she later stated that "it didn't phase her". In any event, it is clear that she did not tell Mr. Bawa that she did not want the account, and that he should close it.

The parties agree that Mr. Bawa then called Ms. Ghanie on the following day, while they were both at work, to pass on a referral related to a mortgage matter. Mr. Bawa claims that he reminded Ms. Ghanie to sign the TFSA documents at that time, and that she assured him she would. Ms. Ghanie stated that the subject did not come up in the course of their phone call. Once again, Ms. Ghanie could have taken the opportunity to tell Mr. Bawa that she did not want the account and instruct him to close it, but admitted that she did not do so.

It is not clear whether Mr. Puri and/or Ms. Gallacher (and whoever was involved in the decision to terminate Mr. Bawa's employment at the ASG) were aware of these two phone calls between Mr. Bawa and Ms. Ghanie when the decision was made to terminate his employment.

The fact that Ms. Ghanie did not advise Mr. Bawa on either of these two occasions to close the account leaves me with the impression that she was not certain that she did not want the account. If she had clearly wanted the account, she would not have waited five days without signing the documents, a step she likely knew would raise compliance concerns. The only conclusion I can draw from this is that she was unsure about whether she wanted to open a TFSA with RBC. In the end, I can only consider the actions she

took or failed to take, and I conclude from her evidence that her failure to advise Mr. Bawa (or anyone else) that she did not want the account or instruct him to close it must be taken as her having providing implied consent to having it opened.

Mr. Bawa's motivation for opening TFSA:

It was clear that all of the witnesses called by the Bank shared the view that Mr. Bawa acted in the manner he did on his last day of work- whether it was opening many TFSA accounts, or standing behind the counter where the CSRs worked in order to gain direct access to customers coming into the branch – in order to make more ‘sales’ and reach the next level of bonus payout under the STI program. This was referenced in the Dismissal with Cause Summary prepared internally to document the Bank’s rationale for the dismissal, and in the termination letter provided to Mr. Bawa. Mr. Puri and Mr. Noussis also testified that Mr. Bawa himself had mentioned this a few times during the meeting that they had with him on September 26.

Mr. Bawa flatly denies saying anything about “units” at the meeting, or that the STI program played any role in his having opened the accounts that he did on his last day of work at the branch. While he acknowledged under cross-examination that he is a sales-oriented person, he stressed the fact that by September 17th he had already reached the threshold of 851 units required for the Level 11 “payout” and that he would have been unable to achieve the Level 12 ‘payout’ of over 900 units. As stated above, the parties agree that when Mr. Bawa began his new job on September 19, he had achieved a total of 863 units.

Counsel for the Bank contended that Mr. Bawa would have been approximately 8 units short of the Level 11 target by Wednesday of his final week, and so would have known that he only had a few days to reach that threshold in his final few days. Mr. Bawa agreed that he had been aware earlier that week that he was close to the Level 11 target, but stated that he knew that he could attain the missing units in two or three days. He testified that each account manager received weekly reports that tracked the units attained, and that he also kept his own daily tally. He insisted that as a result of his own calculations,

he was aware that he had passed the Level 11 target by the time he left work on Friday, September 16th.

Counsel for the Bank challenged Mr. Bawa's assertion, noting that he did not produce any written evidence in support of it. I accept Mr. Bawa's response that he had not kept his notes or calculations with regard to the number of units he had attained, given that he was moving to a new job where he would no longer be participating in the STI program.

While counsel for the Bank had clearly reviewed the figures required to achieve the various bonus levels and Mr. Bawa's progress through them at different points in time closely, it is apparent from the evidence that none of the Bank's witnesses who were involved in the decision to terminate his employment had done so. Ms. Gallacher acknowledged in her evidence that she did not conduct any investigations, and relied on Mr. Puri's actions in this regard. When Mr. Puri was asked whether he had verified the number of units that Mr. Bawa had achieved, he acknowledged that he had not. Mr. Noussis also admitted that he had not done so.

Handwritten notes alleged to have been taken by Mr. Noussis during the September 26 investigation meeting were filed at the hearing. Mr. Puri testified that Mr. Noussis was recording the discussion held at the meeting, while Mr. Bawa insisted that Mr. Noussis had not done so. Mr. Noussis testified that he had taken notes of the discussion, as it was taking place.

The Bank also filed copies of three pages of other notes allegedly written by Mr. Noussis on a notepad on his desk, referring to various details related to Mr. Bawa's case. The pages contain the dates September 26 and September 28. Without detailing all of the evidence surrounding this relatively minor point, Mr. Noussis initially testified that he had made these notes on or shortly after the dates specified. When pressed on this point in cross-examination, he subsequently changed his evidence, and acknowledged that he did not recall when he wrote them. While I am not prepared to accept Mr. Bawa's assertion that Mr. Noussis did not make any notes at the September 26th meeting, the

evidence on this point leads me to question the accuracy of the notes he allegedly made, as well as the timing of when they were made.

Mr. Bawa's confession:

As outlined above, Mr. Bawa admits to having called Mr. Puri's voicemail on September 27th and confessing to not having obtained consent and to lying at the meeting the previous day. Interestingly, the transcript of the message filed does not refer to him saying that he opened the TFSA account on Ms. Ghanie's account in order to obtain more units, although the Dismissal Summary form suggests that he did.

Mr. Bawa testified that he had decided to confess to Mr. Puri, because he felt that it was the best way to hold onto his job. He had the clear sense from his discussion with Mr. Puri at the meeting they had that he did not believe him, and that Mr. Puri felt that he had committed a serious offence. He recalled Ms. Ghanie suggesting that Mr. Puri would not be "too hard on him" if he admitted to having opened the account without her consent, and that as his superior, Mr. Puri would have expected him to accept blame for something that he was convinced that Mr. Bawa had done. Mr. Bawa also expected – wrongly, as it turned out – that because of his sales success with the Bank and the fact that he had a clean disciplinary record, he would likely only receive a warning if he confessed to having opened the TFSA without Ms. Ghanie's consent.

This aspect of Mr. Bawa's evidence provides me with the most difficulty. If Mr. Bawa is telling the truth about having previously obtained Ms. Ghanie's express consent, his decision to confess to something he did not do and effectively lie to his employer is at best misguided, and at worst, manipulative and intended to obscure the truth. Employers are entitled to expect their employees to be honest and transparent at every turn, especially during the course of an investigation into alleged improper conduct. As an Account Manager at a bank, Mr. Bawa held a position of trust and was expected to act with complete integrity and transparency at all times.

However, Mr. Bawa's actions must be considered in light of the situation he found himself in. He was clearly in a state of high anxiety, and understood that there was a real

chance of losing his job. He feared that this would have (and did, in fact, have) a devastating financial effect on his family. Having heard Mr. Puri's evidence, I appreciate Mr. Bawa's concern about his ability to persuade Mr. Puri to accept his explanation. It appeared that Mr. Puri had made up his mind that Mr. Bawa had acted improperly before he met with him, on the strength of what he had been told by Mr. Santucci and Ms. Ghanie on the prior Friday.

While I do not sanction Mr. Bawa's actions in this regard in any way, his tone and comportment while testifying about this issue, along with a consideration of the surrounding circumstances lead me to conclude that he was telling the truth when he testified at the hearing that he felt that this was the only way he could save his job.

Bank's investigation:

I did not hear much evidence about the investigation undertaken by the Bank, and the steps taken to arrive at the conclusion that Mr. Bawa's employment should be terminated for cause. It is clear from Ms. Ghanie's evidence that while her statements were crucial to the action taken by the Bank, she herself was not involved in the decision. Mr. Noussis testified that he similarly had no input into the decision to terminate Mr. Bawa's employment, and that the reason he had signed the letter of termination was that he was Mr. Bawa's manager at that time. He also clarified that while the Dismissal With Cause Summary indicates that he "recommended" termination, he had not in fact done so.

The Summary form indicates that Ms. Gallacher "concurred" with the decision to terminate Mr. Bawa's employment. She, along with Mr. Noussis, attended the October 6th meeting at which Mr. Bawa was advised that he was being dismissed. However, as set out above, Ms. Gallacher also acknowledged in her testimony that she had not conducted any investigations into the matter, and had relied on Mr. Puri's efforts in this regard.

Mr. Puri's evidence on this issue was fairly brief. He initially spoke with Ms. Ghanie during his September 23rd visit to the branch, and then discussed the matter with Mr. Santucci. From his notes of those discussions, it appears that he understood at that point that Mr. Bawa was not scheduled to work at the branch on that day, and yet had opened

seven TFSA accounts, most of which were not supported by signed applications. The notes also refer to another employee having told Mr. Puri that Mr. Bawa had stood behind the CSR's "asking for units" and trying to convince the CSR's to open their own accounts. When asked at the hearing why he had made notes of these discussions, he stated that he knew by then that "it was a serious matter" that he needed to document.

As stated above, my impression from Mr. Puri's evidence about the meeting he held with Mr. Noussis and Mr. Bawa on September 26th was that he had already arrived at the conclusion that Mr. Bawa had acted improperly, and had hoped that Mr. Bawa would acknowledge that. It was clear that Mr. Puri thought that the note that Mr. Bawa had left for Ms. Ghanie suggesting that she not ask questions supported his assumption that Mr. Bawa had not obtained her prior consent to open the TFSA account. He also testified that Mr. Bawa had conceded at the meeting that he had been "trying to get my units", and it was clear that this played a role in his conclusion that Mr. Bawa had acted improperly.

Mr. Puri received the voicemail message containing Mr. Bawa's confession the next day. He testified that he passed the message on to both Mr. Noussis and with Ms. Gallacher, who was about to take over his role. He also advised ASG that Mr. Bawa had confessed. I conclude from the fact that I did not hear any further evidence about the process followed to reach the conclusion that Mr. Bawa's employment should be terminated, that Mr. Bawa's confession led the Bank to scale down its investigation of the surrounding circumstances. While this may be understandable, it would have been prudent to ask Mr. Bawa to confirm in writing that he had opened the account without consent.

It would have also been prudent to question Ms. Ghanie more closely, as some of her actions, or inaction, might have influenced the decision made or the course of action taken. Having reviewed her evidence closely, I find that Ms. Ghanie's behavior at various points belie her insistence that Mr. Bawa had acted against her wishes when he opened the TFSA on her behalf. Aside from her lack of complaint during the two calls described in detail above, she invited Mr. and Ms. Bawa into her home late at night on September 26th, and agreed, at Mr. Bawa's request, not to tell Mr. Puri about it. She also admitted to praying with Ms. Bawa on her front steps, and showed obvious warmth to Mr. Bawa

when he advised her at the pre-gala gathering at the branch – wrongly, as it turned out – that everything had been sorted out and that he would be keeping his job.

Ms. Ghanie also acknowledged that she had called Ms. Bawa when she heard this news, to tell her how happy she was that things had worked out well. She did not deny that she had made further calls to Ms. Bawa, initially after being advised that Mr. Bawa was being dismissed and then subsequently, to express the hope that things would improve in their lives.

When asked why she had acted in this manner, if Mr. Bawa had opened the TFSA without her consent and she was apparently considering whether to report this breach of the Code of Conduct to the branch manager, Ms. Ghanie responded that she was a caring person. While that may be so, I find it difficult to reconcile her insistence that she had not provided consent to Mr. Bawa to open the account with her actions outlined above.

Post-termination text message:

The Bank alleged that the Bawas' visit to Ms. Ghanie's home on September 26 and the text message sent by Ms. Bawa after her husband's dismissal constitute 'after-acquired cause' that justifies Mr. Bawa's termination from employment.

I do not accept this contention. If Ms. Ghanie felt that she was being harassed or stalked by Mr. Bawa that evening, she would not have agreed with his request that she not tell Mr. Puri or anyone else at the bank that they had met and discussed the issue. She would also not have hugged him when he visited the branch before the RBC gala event on September 28, two days later, nor voluntarily kept in contact with his wife.

The text message sent by Ms. Bawa one week after her husband's dismissal clearly worried Ms. Ghanie, to the point that she called Mr. Puri on his cell phone to tell him about it and seek his assistance, and reported it to the police. The content of the message is inappropriate and I appreciate Ms. Ghanie's evidence that she found it threatening and the references to her having to "answer to the lord" troubling. While Ms. Bawa was likely upset about what had happened, it was unacceptable for her to have reacted in this

manner. Her message was vindictive, and cruel. I do not find, however, that this conduct, by the spouse of a complainant, constitutes cause for a dismissal that I have otherwise found to have been unjust and in breach of the *Code*.

For all of the reasons set out above, I find that Mr. Bawa's dismissal from the Bank was unjust.

REMEDY and ORDERS:

Mr. Bawa seeks reinstatement to his employment with RBC, with full back pay, benefits and bonuses owing. He also seeks reinstatement of his mutual fund license and payment for legal fees he incurred at the beginning of the process, prior to the commencement of the hearing. He also seeks repayment of any expenses associated with bringing his complaint and participating in the hearing.

Mr. Bawa pointed out that he had a clear employment record with the Bank until the events in question. He also emphasized the fact that he did not obtain any personal gain from what occurred, and that neither RBC nor Ms. Ghanie had suffered any monetary loss or loss of reputation as a result of his actions.

Section 242(4) of the *Code* provides me with the jurisdiction to reinstate an employee who I find has been unjustly dismissed, and/or award compensation to make up for amounts they have lost. I am not prepared to order reinstatement in this case. While I have concluded that the Bank's decision to terminate Mr. Bawa's employment for cause was without merit, the fact remains that Mr. Bawa lied to his employer by confessing to having done something that he now claims he did not do. While I have determined that RBC's concerns about Mr. Bawa's integrity and credibility around the TFSA issue were unfounded, it is understandable that the Bank would now harbour doubts about his honesty and trustworthiness, having been advised that the confession was a lie. I accept the Bank's contention that this has led to an irreconcilable breakdown of trust between the parties, and that a satisfactory employment relationship cannot be restored.

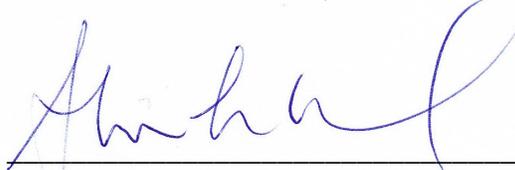
I also regard the text message sent by Ms. Bawa to Ms. Ghanie that resulted in Ms. Ghanie contacting the police and having an officer dispatched to the Bawas' home in order to warn them not to communicate with her any further, to be a factor taken into account in granting a remedy.

In lieu of reinstatement, I find that Mr. Bawa is entitled to some compensation. His employment with RBC was terminated approximately eighteen months ago, and as of the last day of hearing in mid-January 2013, he has not been able to find another job. I am satisfied from his evidence on this point that he has made significant efforts in this regard, and that his difficulty in finding work stems from the Bank's decision to dismiss him for cause. On the other hand, Mr. Bawa had only worked for the Bank for two years and nine months at the time of his termination. Taking into account all of the above, I award him the equivalent of nine months of his regular wages, including any benefits or bonus payments owing during that period. I leave it to the parties to calculate the proper amounts owing in this regard.

Further, I order the Bank to advise the Ontario Securities Commission that Mr. Bawa has been determined to have been unjustly dismissed. Whatever is required to reverse the actions taken at the time of his termination should be undertaken, so that his status reverts back to what it was prior to his termination from RBC in October 2011. Finally, I order the Bank to issue a letter of recommendation outlining the positions held by Mr. Bawa at RBC, and stating that he performed them in a satisfactory manner.

I remain seised of this matter, in the event that the parties have difficulty implementing any of the remedies awarded.

DATED at TORONTO, ONTARIO this 16th DAY OF April, 2013.



Shari L. Novick
Adjudicator