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## • OVER \$600,000 IN DAMAGES: BCCA CONFIRMS BIAS CAN UNDERMINE MISCONDUCT-BASED TERMINATIONS •

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In *Nanaimo (City) v. Mema*, [2026] B.C.J. No. 948, 2026 BCCA 203 (“*Mema*”), the British Columbia Court of Appeal upheld a British Columbia Human Rights Tribunal (the “**Tribunal**”) award of damages exceeding \$600,000 due to a dismissal being based, in part, on racial bias. The decision is an important reminder to employers that even where employee misconduct exists, if any part of the decision to dismiss an employee is based on a prohibited ground in the British Columbia *Human Rights Code* (the “*Code*”), that constitutes a *prima facie* case of discrimination.

### BACKGROUND

The City of Nanaimo (the “**City**”) dismissed its Chief Financial Officer following concerns about his use of a corporate credit card that accumulated approximately \$14,000 in personal expenses. While the Tribunal accepted that this conduct was problematic, it found that the City’s response was nonetheless discriminatory under the *Code* because it was tainted by bias. In particular, the City relied heavily on an internal report prepared by another employee that was found to reflect a “thread of racial bias” and to overstate the seriousness of the misconduct. This report contributed to the employer’s decision to suspend and later terminate the employee.

The Tribunal’s findings were upheld on judicial review and ultimately by the Court of Appeal.

### THE COURT OF APPEAL DECISION

Central to the Court’s reasoning was its confirmation that discrimination need only be “a factor” in an employer’s adverse treatment of an employee to attract liability under the *Code*. The Court concluded that whether the City had cause to terminate the employee was irrelevant. Rather,

when analyzing a contravention of the *Code*, the proper inquiry is not whether discipline was justified due to misconduct, but whether bias played any role in how the employer responded.

In so ruling, the Court stated: “Misconduct and a racist motivation could co-exist. Only the presence or absence of the latter was relevant.”

### DISCIPLINARY DECISIONS: THE ROLE OF THE INVESTIGATION AND WHY IT MATTERS

*Mema* highlights the importance of conducting proper workplace investigations. Here, the City did not conduct a fulsome or independent investigation, relying instead on an internal report that was found to be informed by racial bias. This decision-making process undermined its response and exposed it to liability despite the presence of employee misconduct.

The decision reflects a broader trend of scrutinizing how employers make disciplinary decisions. Courts and tribunals will look beyond the existence of misconduct and assess *how* the employer reached its conclusions, including whether bias, conscious or unconscious, may have influenced the outcome. As a result, while investigations do not need to be perfect, employers must ensure their investigative processes are fair, impartial and grounded in evidence to effectively manage risk under the *Code*.

### KEY TAKEAWAYS

When investigating workplace misconduct, keep the following in mind:

- **Cause is not a defence:** A “for cause” termination may still violate human rights legislation if a prohibited ground plays any role in the decision.

- **Investigate complaints thoroughly and objectively:** Employers should not rely too heavily on one employee's account and must assess complaints for accuracy and potential subconscious bias. Consider using an independent, third-party investigator to enhance neutrality.
- **Address implicit bias in investigations:** Train investigators and decision-makers to recognize and mitigate unconscious bias, and where appropriate, engage a specialist in implicit bias (e.g., racial bias) to support a fair and impartial process.
- **Ensure decisions are grounded in fact, not tainted by bias:** Before making a disciplinary decision, consider whether a protected characteristic may have influenced the outcome of an investigation, even indirectly.

For more information on how to conduct a workplace investigation, see our previous insight: <https://www.lawsonlundell.com/publication/a-review-of-the-standards-of-procedural-fairness-in-workplace-investigations>.

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