

# Court of King's Bench of Alberta

**Citation: Benham v Suncor Energy Inc, 2026 ABKB 364**

**Date:** 20260512  
**Docket:** 2101 12438  
**Registry:** Calgary

2026 ABKB 364 (CanLII)

Between:

**Kelly Benham**

Plaintiff

- and -

**Suncor Energy Inc. and Suncor Energy Services Inc.**

Defendant

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**Reasons for Decision  
of the  
Honourable Justice N.F. Dilts**

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[1] Mr. Benham was a long service employee of Suncor Energy Services Inc, a subsidiary of Suncor Energy Inc (together Suncor) until his employment was terminated on March 18, 2021. Mr. Benham submits that his employment was wrongfully terminated by Suncor and seeks damages for wrongful termination, plus aggravated and punitive damages and the restoration of stock options and restricted share units (RSU) that he believes were wrongly cancelled.

[2] Suncor submits that it had just cause for terminating Mr. Benham's employment. It submits that Mr. Benham had been reprimanded for breaching the confidentiality obligations he owed to

Suncor by divulging Suncor confidential information to his son Nick Benham (Nick). Suncor submits that despite that reprimand, Mr. Benham continued to share Suncor confidential information with his son and failed to protect potential inventions for Suncor's benefit which it submits formed part of his son's intervening Patent Filing. Suncor also submits that Mr. Benham placed himself in a conflict of interest by proposing that Suncor use his son's Patent Filing and implement concepts contained in his son's Patent Filing in its operations.

[3] The issue in this litigation is whether Suncor had just cause for terminating Mr. Benham's employment and, if not, what damages Mr. Benham is entitled to. The parties requested that I provide my decision on the issue of just cause, reasonable notice, and the implications of termination on Mr. Benham's stock options and restricted share units (RSU) to allow them to calculate the resulting award, if any.

### **The Law**

[4] A finding that an employee breached the duties owed to their employer does not itself give rise to just cause for terminating the employee's employment. To constitute just cause for termination, an employee's conduct must be of a magnitude and nature that it fractures the employment relationship: *McKinley v BC Tel*, 2001 SCC 38 at paras 29, 48-49.

[5] To determine if an employer had just cause for terminating an employee's employment, the court is to take a broad contextual approach considering the nature and extent of the conduct that led to termination, the employee and employer's particular circumstances, and whether the conduct that led to termination is incompatible with the continued employment relationship: *Baker v Weyerhaeuser Company Limited*, 2022 ABCA 83 at para 28 citing *Dowling v Ontario (Workplace Safety and Insurance Board)*, 2004 CanLII 43692 at paras 49-53 (ONCA).

[6] The factors to be considered in this analysis include: i) the employee's length of service and role within the organization including their level of responsibility, ii) the employer's reasonable expectations given the employee's role and responsibilities and the employer's policies, iii) any feedback, warnings or cautions given to the employee, iv) the employer's business and how it was or could be impacted by the employee's conduct, and v) whether the conduct was an isolated incident or a course of conduct. The question to be answered is whether the employer/employee relationship, understood to be founded on principles of trust, fidelity and integrity, can no longer viably subsist: *Poliquin v Devon Canada Corporation*, 2009 ABCA 216 at para 37. This is a factual inquiry that requires the court to examine the nature and extent of the employee's conduct, the surrounding circumstances, and whether termination of employment was a proportional response: *Baker v Weyerhaeuser Company Limited*, 2022 ABCA 83 at para 28.

[7] The onus is on Suncor to demonstrate that it had just cause to terminate Mr. Benham's employment.

### **The Nature and Extent of Mr. Benham's Conduct**

#### **The November 2018 Reprimand**

[8] Until his employment was terminated, Mr. Benham was a Senior Technical Advisor working in Suncor's Enterprise Technical Services group (Enterprise TS). Suncor operates refineries in Edmonton and Montreal where it processes heavy oil into a range of refined products,

including fuels. Mr. Benham was a highly respected subject matter expert within Suncor regarding various technologies used in the refining industry, including fluid catalytic cracking (FCC), hydrofluoric acid alkylation (HFA) and slurry phase cracking (SHC). As a senior technical advisor, Mr. Benham's role was to support Suncor's operations in the use of these commercialized technologies.

[9] At the time his employment was terminated, Mr. Benham had been employed by Suncor or its predecessor companies for in excess of 40 years. Mr. Benham joined Gulf Canada in October 1980 as a professional engineer. In 1986, Gulf's refinery business was acquired by Petro-Canada and he continued as an employee of Petro-Canada. When Petro-Canada relocated its head office from Calgary to Mississauga in 1997, Mr. Benham remained in Calgary and worked exclusively from his home office. In 2009, Suncor acquired Petro-Canada and Mr. Benham began working out of the Suncor head office.

[10] With the knowledge and agreement of his former supervisor, a significant number of business records were delivered to Mr. Benham's home office in 2007 (the pre-2000 files). Those pre-2000 files included records relating to a SHC unit that Petro-Canada built and operated at its Montreal Refinery (the Montreal Unit). The Montreal Unit used SHC technology known as CANMET technology (CANMET SHC technology). Mr. Benham's evidence was that at that time the CANMET SHC technology was owned by Natural Resources Canada (NRCan) and was licensed to Petro-Canada. Around the time the pre-2000 files were transferred to Mr. Benham's home office, Petro-Canada wished to no longer license and operate the CANMET SHC technology from NRCan despite what Mr. Benham said was an ongoing obligation to do so.

[11] As part of the effort to unwind Petro-Canada's obligations to license and operate the CANMET SHC technology, Mr. Benham, with his supervisor's approval, assumed a consulting role outside of his regular duties at Petro-Canada. His evidence was that his objectives were to transition the CANMET SHC technology and related patents to NRCan, eliminate Petro-Canada's obligation to license and operate the CANMET SHC technology, and support NRCan's efforts to find another licensor of the CANMET SHC technology. His evidence was that the pre-2000 files were at his home office to assist him in this consulting role.

[12] Mr. Benham acted in this consulting role from 2006-2009. During that time, although originally Petro-Canada's records, the pre-2000 files came to include documents from third parties involved in discussions regarding the marketing and licensing of the CANMET SHC technology. They also included design drawings for the Montreal Unit. Because no formal agreements could be located documenting Petro-Canada's interest in the CANMET SCH technology, Mr. Benham's evidence was that by 2017 there was a lack of clarity as to ownership of the pre-2000 files and Petro-Canada/Suncor's rights respecting the CANMET SHC technology. Mr. Benham acknowledged that some of the pre-2000 files in his home office could include Petro-Canada/Suncor confidential information.

[13] In 2017, there was renewed industry interest in the CANMET SHC technology. Mr. Benham explored the potential of using SHC technology in Suncor's operations and presented the idea of developing a patent based on the CANMET SHC technology. He and his colleague Mark Archer, also part of Suncor's Enterprise TS team, began work on a potential Suncor SHC patent.

The Suncor SHC patent ultimately became known as “An Integrated Thermal Process for Heavy-Oil and Gas to Liquids Conversion” (the ITP Patent).

[14] Around this same time, Mr. Benham’s son Nick, a relatively new engineering grad, was interested in securing a job at Suncor in the Enterprise Technology Development group (Enterprise TD). The Enterprise TD group within Suncor was a sister organization to the Enterprise TS group reporting to the same Vice President. Where the Enterprise TS group supported existing technologies in use within Suncor’s operations, the Enterprise TD group was responsible for the development of new technologies within Suncor. The Suncor SHC patent fell under Enterprise TD’s mandate. At the material time, Todd Pugsley was the Director of Technical Development in the Enterprise TD group and was responsible for the development of the ITP Patent.

[15] In March 2018, Mr. Benham sent Nick’s resume to Mr. Pugsley in hopes that Nick would be offered a job at Suncor. Nick’s cover note disclosed that he had a “deep interest in developing and analyzing integration opportunities for [SHC] within Suncor.”

[16] Without seeking approval from his supervisor to do so, Mr. Benham involved Nick in the development of Suncor’s ITP Patent. Nick’s evidence was that he spent hundreds of hours helping Mr. Benham with his work relating to the ITP Patent including searching Google Patents and Alberta Archives to gather examples of similar patents available in the public domain. Nick’s evidence was that he did not review any Suncor confidential information in doing his work, including the pre-2000 records. However, both Nick and Mr. Benham testified that they discussed Suncor’s potential ITP Patent. The agreed exhibits contain numerous examples in the March and April 2018 time frame where Nick provided Mr. Benham notes related to the work on the ITP Patent.

[17] In a document shared with Mr. Benham on March 20, 2018, Nick recorded what he identified as the activities and benefits of working on the ITP Patent. Nick’s targeted outcomes included his participation in the development of the ITP Patent and a potential job opportunity with Suncor, with the resulting benefit of being recognized for his insights during the development of the ITP Patent. Both Mr. Benham and Nick understood that being an inventor of a patent could shorten Nick’s pathway to securing his professional engineering designation; in addition, their shared goal was to see Nick gain employment at Suncor.

[18] On March 21, 2018, Mr. Benham forwarded Nick an email attaching the latest iteration of the ITP Patent. The March 21, 2018 email included emails with Suncor’s external legal counsel and others within Suncor who were working on the ITP Patent. On April 10, 2018, Mr. Benham copied Nick on internal Suncor communications between himself, Mr. Archer and Mr. Pugsley regarding the development of the ITP Patent.

[19] Nick continued working on the ITP Patent. Ultimately, Mr. Benham credited Nick for having the idea for how to differentiate the ITP Patent from the CANMET SHC technology. That differentiator became the basis for the ITP Patent.

[20] Mr. Benham’s evidence was that on June 14, 2018, now three months after involving Nick in the development of the ITP Patent, he informed Suncor’s external legal counsel of Nick’s involvement and expressed his view that Nick needed to be recognized as an inventor of the ITP

Patent. Mr. Benham's evidence was that Suncor's external legal counsel advised him to inform Suncor's internal intellectual property counsel (Suncor IP legal) of Nick's role in the development of the ITP Patent.

[21] On June 15, 2018, Mr. Benham and others met with Suncor IP legal regarding the ITP Patent. In that meeting, Mr. Benham informed Suncor IP legal that he had disclosed the contents of the ITP Patent to Nick. At that meeting, Suncor IP legal also became aware of the pre-2000 files in Mr. Benham's home office and the issues regarding ownership of the pre-2000 files and Petro-Canada/Suncor's interest in the CANMET SHC technology.

[22] Mr. Benham's evidence at trial was that Suncor IP legal was surprised to learn of Nick's involvement with the ITP Patent but did not think it was a problem. Contrary to Mr. Benham's evidence, on June 20, 2018 Suncor IP legal wrote to Mr. Benham saying:

the unsecure storage of Suncor confidential information in your home office and the disclosure of Suncor confidential information to your son is in direct contravention of your confidentiality obligations contained in your employment agreement and is offside Suncor's Standards of Business Conduct and its policies relating to the storage and disclosure of confidential information.

[23] Suncor IP legal identified certain remedial steps Mr. Benham was to take, one of which was to deliver the pre-2000 files to Suncor's offices. Another was to obtain a signed Non-Disclosure Agreement (NDA) from Nick regarding his work and involvement on the ITP Patent.

[24] Three significant events arose out of Nick's involvement with the ITP Patent. First, Suncor secured an NDA and an Assignment Agreement with Nick to ensure the protection of its confidential information and its sole ownership of the ITP Patent. Second, Nick's name was included on the ITP Patent application as an inventor, along with Mr. Benham and Mr. Archer. Third, Nick's involvement in the ITP Patent was reported to Mr. Benham's supervisor, Mr. Hieu Tran, General Manager Enterprise TS. Mr. Tran engaged Suncor human resources to address Mr. Benham's conduct.

[25] The ITP Patent was filed July 11, 2018. The filing gave Suncor one year within which to finalize it. Suncor's plan was to test the patented ITP technology on a small scale at its Devon facility (the "Devon Pilot Project") with a view to scaling up the technology for use at Suncor's Edmonton Refinery, a project known internally at Suncor as the Edmonton Bitumen Integration project ("EBI project").

[26] Between July and October, 2018, Mr. Tran asked Mr. Benham a number of times to provide information with respect to both the pre-2000 files and Nick's involvement in the development of the ITP Patent. On July 24, 2018, responding to Mr. Tran's inquires into Nick's involvement in the ITP Patent, Mr. Benham wrote:

I have mentored Nick on CANMET 2 and the integration opportunities associated with various other technologies. He has been extremely valuable in generating the very broad ITP patent having put several hundred hours into the patent writing activity. The Q and A associated with this [*sic*] writing and drawing activities have resulted in a number of the inventions associated with the ITP package and hence

he is required by Suncor to be listed on the ITP patent as an inventor. Based on the premerger agreements with Petro-Canada, I don't see an issue with the technical information disclosure to Nick especially since most of it is covered by my previous patents and publications on the topic. Petro-Canada has also disposed of all Canmet [sic] related files including the ones stored at Iron Mountain. The patent activity itself had to be confidential and hence an NDA was required to correct the issue.

Nick is a mechanical engineer grad with his level 3 a [sic] C.F.A. who is presently working for a Private Equity company and has a very high level understanding of this technology and the business opportunities it presents....Hence the effort he put into moving this opportunity forward for Suncor and the Alberta economy in general. I am amazed Suncor isn't jumping at the opportunity to bring him on-board [sic].

[27] Mr. Benham's reply to Mr. Tran reveals that he did not understand his obligations to protect Suncor's confidential information, did not understand the implications of having copied Nick on internal Suncor communications and communications with Suncor's external legal counsel, and did not appreciate that his actions resulted in risk to Suncor's business interests.

[28] On July 26, 2018, Mr. Tran met with Mr. Benham and Suncor human resources to discuss Mr. Benham's sharing of Suncor's confidential information with Nick without authorization.

[29] On July 31, 2018, despite the concerns expressed by Suncor IP legal and despite by then having met with Suncor human resources and his supervisor about his breach of the duties he owed to Suncor to protect its confidential information, Mr. Benham shared with Mr. Pugsley another idea that he and Nick were working on relative to ITP relating to a jet shear process:

Nick was doing some research on partial upgrading technology that lead [sic] into a discussion on the Jet Shear process. After an hour or so of discussion, we came to the conclusion that the authors might have misidentified the cause and effects and that this process could be substantially improved by elements established in the ITP patent application.

[30] In follow on communications, Mr. Benham described jet shear as "an example of Nick asking "what about"." The discussion about the jet shear process continued August 1, 2018 with Mr. Benham suggesting to Mr. Pugsley that it would be a quick and cheap addition or variation to the ITP Patent.

[31] In his August 1, 2018 email to Mr. Pugsley, Mr. Benham explained his and Nick's opinion regarding the jet shear process, suggesting that all the components for upgrading the jet shear process were explained in the ITP Patent and that Suncor may want to file a very simple overlay of the ITP Patent regarding the jet shear process. At Suncor, an employee was required to file an Invention Report Form reporting to Suncor IP legal any invention or potential invention generated as part of their work even if the potential invention was at the conceptual stage. During his tenure at Suncor, Mr. Benham had submitted many Invention Report Forms. Mr. Pugsley's evidence was that he told Mr. Benham that he should disclose the potential jet shear invention to Suncor IP legal. Doing so would allow Suncor to assess whether and how to protect its intellectual property. Mr. Benham did not disclose the potential jet shear invention to Suncor IP legal and did not complete an Invention Report Form with the consequence that Suncor IP legal was not aware that Mr.

Benham was collaborating with Nick regarding jet shear as a potential overlay to the ITP Patent. As a result, Suncor had no opportunity to evaluate whether to commit resources to patent the idea.

[32] Nick continued to pursue the possibility of working with Suncor by providing a proposed scope of work to Mr. Pugsley.

[33] On November 18, 2018 Mr. Benham received a formal reprimand from Suncor regarding his breach of Suncor's Standards of Business Conduct (Reprimand). Suncor identified that Mr. Benham's breaches arose from i) maintaining certain business records in his home office, and ii) disclosing to Nick the contents of Suncor's prospective ITP Patent application. Mr. Benham was told that his conduct was contrary to Suncor's Conflict of Interest and Confidentiality Policy Guidance & Standards (Conflict of Interest PG&S) and its intellectual property policies. In the Reprimand Suncor noted that Mr. Benham's conduct jeopardized Suncor's ability to protect and patent its intellectual property. The Reprimand concluded by confirming Mr. Benham's agreement not to disclose Suncor confidential information to anyone without Suncor's permission and to strictly comply with Suncor's Standards of Business Conduct going forward. Mr. Benham was advised that any further violations of Suncor policy might result in additional disciplinary action, up to and including termination.

[34] This same message was reiterated in Mr. Benham's 2018 performance review in late 2018: Mr. Benham was directed to safeguard Suncor's confidential information and to avoid any conflict of interest. Notably, as Mr. Tran was not aware of Mr. Benham's discussions with Mr. Pugsley around jet shear, the Reprimand did not include mention of Mr. Benham's failure to file an Invention Report Form covering the concept.

[35] Mr. Benham provided a written response to the Reprimand on November 29, 2018 and requested that it be removed from his employee file. The written response largely addressed the pre-2000 files that were in Mr. Benham's home office. To a lesser extent, Mr. Benham addressed Nick's involvement with the ITP Patent, confirming again that the process of researching and developing the ITP Patent involved hundreds of hours of Nick's time.

[36] Mr. Tran testified that he advised Mr. Benham that his response did not change Suncor's conclusion regarding Mr. Benham's violation of Suncor policies. Suncor did not otherwise discuss Mr. Benham's response with him and the Reprimand remained on Mr. Benham's employee file.

### **Nick's Patent Filing**

[37] Nick continued to collaborate with Mr. Benham on ITP and continued to pursue the possibility of working for Suncor. Despite the warnings he received, Mr. Benham did not disclose to Mr. Tran that Nick continued work on ITP and did not seek or obtain approval from Mr. Tran for Nick's ongoing involvement with the ITP Patent.

[38] On January 17, 2019 Nick followed up one final time with Mr. Pugsley saying: "I've continued working on ITP and have been developing some interesting potential outside the original scope of the technology."

[39] On February 22, 2019, unbeknownst to Suncor, Nick filed a preliminary patent filing.<sup>1</sup> That preliminary patent filing became the basis for his Patent Filing made May 6, 2019 entitled “Integrated Thermal Process for Sustainable Carbon Lifecycle” (Nick’s Patent Filing). Neither Nick’s preliminary patent filing nor Nick’s Patent Filing were available to Suncor.

[40] Nick’s Patent Filing generally related to enhancements to ITP that would allow for the processing of plastics and bio renewable feedstocks, with the objective of generating green carbon and hydrogen. In Suncor’s view, it also incorporated ideas regarding jet shear. At that time, biofuel feedstock processing was not contemplated within the Devon Pilot Project. However, in his 2018 performance summary Mr. Benham identified that ITP was a potential platform for processing biofuel feedstocks. In addition, the question of whether the ITP platform had the ability to co-process bio renewable and plastics feedstocks was of interest within Suncor and Mr. Benham was consulted internally on whether ITP could co-process alternative feedstocks.

[41] Mr. Benham did not disclose to Suncor that Nick was working in the area of bio renewable co-processing in the context of ITP and did not complete an Invention Report Form respecting the co-processing of bio renewables in the context of ITP.

[42] At the same time Nick was developing his Patent Filing, Mr. Benham was involved in re-writing the ITP Patent claims before the July 11, 2019 deadline. In April 2019, just prior to Nick’s Patent Filing, Mr. Benham circulated within Suncor an email from Nick that attached an Alberta Innovates paper that he felt was somewhat related to ITP.

[43] The window for changes to Suncor’s ITP Patent closed on July 11, 2019. Mr. Benham was dissatisfied with the rewrite, dissatisfied that he was not asked to sign off on the rewrite, and dissatisfied that the ITP Patent was not filed internationally. In his view, the ITP Patent had to be patented worldwide to attract a licensor with the financial ability to build the required facilities.

[44] On July 24, 2019, months after Nick’s Patent Filing was filed, Mr. Benham sent a communication to Mr. Tran expressing these concerns. In his communication, Mr. Benham identified what he described as a “potential conflict of interest situation” that he said he encountered when reviewing the status of the ITP Patent with Suncor legal on July 23, 2019. Mr. Benham did not disclose that the potential conflict of interest was Nick’s Patent Filing. Without disclosing that fact, Mr. Benham proposed to Mr. Tran that Suncor could use what was Nick’s Patent Filing to solve Mr. Benham’s concerns relating to the ITP Patent. In his July 24, 2019 email to Mr. Tran, Mr. Benham stated:

The above discussion creates a conflict of interest for me in that I am aware of patents filed in Q1 2019 that are built on novel integration of publically [*sic*] disclosed CANMET 2 technology and other publically [*sic*] available information and patents. These patents are targeted at minimization of the carbon footprint and specifically focus on biofuels and the recycling of plastics. ITP (“An Integrated Thermal Process For Heavy Oil and Gas to Liquids Conversion”) is complementary to these two areas. The technology developed in the Q1 2019 Carbon Footprint Minimization patents [i.e. Nick’s Patent Filing] represents novel adaptations of the

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<sup>1</sup> The preliminary patent filing was not produced in this Action.

CANMET 2 base technology for defining processing options beyond fossil fuels. The elements developed in these patents around biofuels and plastics recycling are complementary to the ITP base patent and in the writer's opinion distinct from the ITP invention covered by Suncor's patent. It is probable that these patent filings could be used to claim any gaps in the ITP filing, or parts of the ITP filing with the Q1 2019 priority filing date. This would allow for [international] filing on the entire spectrum of fuels, biofuels and plastic recycling.

[45] Mr. Benham did not disclose to Mr. Tran that the "Carbon Footprint Minimization patents" referenced in his email was Nick's Patent Filing until Mr. Tran made three further inquiries of him including: "Do you have interests in the 3<sup>rd</sup> party?" and "Why would there be any conflict of interest if the 3<sup>rd</sup> party is completely independent and separate from you?" and "Do you have indirect interests through other relationships?" Once Mr. Benham disclosed that the third party was Nick, Mr. Tran directed Mr. Benham to involve Suncor IP legal in the discussion. Mr. Tran's evidence was that as Nick's Patent Filing dealt with bio renewables and as Mr. Benham had raised bio renewables in the context of the Devon Pilot Project, he was very concerned about the risk of contamination of Suncor's intellectual property.

[46] In his communication with Suncor IP legal on July 24, 2019, Mr. Benham laid out his recommendation to use Nick's Patent Filing as a basis to achieve international filing for the ITP Patent. In his communication with Suncor IP legal, Mr. Benham wrote:

The 3<sup>rd</sup> party discussed below, is also one of the three inventors on the ITP patent. At the time we filed the ITP patent in July 2018, he had spent months developing the ITP patent, made a significant contribution to the eureka moment, and was probably the second most knowledgeable person on the CANMET 2/ITP technology. After the ITP patent filing he has continued to research, ask why, and put together these patents in complementary areas to the fuels focused ITP patent. It is actually very impressive.

[47] Notably, Mr. Benham described Nick not only as the contributor responsible for identifying the differentiator for the ITP Patent but as the second most knowledgeable person on the ITP technology.

[48] Mr. Benham's evidence at trial was that Nick's Patent Filing was a way to fix the problems he identified with the Suncor ITP Patent filing. His evidence was that the value to Suncor of Nick's Patent Filing was its filing date and similar structure more than its substantive content. Mr. Benham's evidence is inconsistent with what he conveyed to Mr. Tran and Suncor IP legal on July 24, 2019 and is inconsistent with later communications he authored to Mr. Tran and Mr. Wamboldt, General Manager of the Enterprise TD group. I find that Mr. Benham viewed Nick's Patent Filing not only as a way to achieve international filing of the ITP Patent backdated to the date of Nick's Patent Filing, but to expand the ITP Patent to include the co-processing of plastics and bio renewables, a concept I find he and Nick had discussed prior to Nick's Patent Filing.

[49] Mr. Benham and Mr. Tran met with Suncor IP legal on August 13, 2019. Mr. Tran's evidence was that he instructed Mr. Benham at that time to "tread carefully" to avoid any conflict of interest and to be very cautious to avoid potential contamination of Nick's and Suncor's intellectual property. Mr. Benham denied being told not to discuss within Suncor the co-processing of plastics and bio renewables in the context of ITP.

[50] Despite what Mr. Tran testified were the cautions and directions expressed to Mr. Benham in the August 13, 2019 meeting, Mr. Benham forwarded Mr. Tran an email on August 20, 2019 that included a timeline demonstrating how Nick's Patent Filing could be used to create a priority date for the ITP Patent, including a table that appears to identify the components of Nick's Patent Filing. Mr. Tran's evidence was that he questioned Mr. Benham about this email.

[51] Mr. Tran informed Mr. Wamboldt of his concerns that Mr. Benham was recommending a patent strategy that potentially involved Nick's intellectual property. On August 26, 2019, Mr. Tran informed Suncor human resources of his concerns regarding Mr. Benham's conduct:

Just to keep you in the loop, Kelly had indicated to [Suncor IP legal] and me that a third party has filed patent applications for other uses of the ITP technology outside of the current Suncor patent filings. He also suggested that Suncor should take over the third party's patents. Upon further discussions, Kelly disclosed that the third party was his son.

Being concerned about the potential intermingling of Kelly's technical work at Suncor, his son's ongoing technical work in this area, and the potential of his son's patents might have been built from ITP technology that he should not have gotten access to, overlaps of all the patents, etc., we asked Kelly if Suncor could have copies of his son's applications to review for potential issues. Kelly indicated that Suncor should contact his son directly. A formal request was sent by [Suncor IP legal] last Friday.

[52] It bears noting that Suncor's only information about the content of Nick's Patent Filing at that time was from Mr. Benham. I find that any direction Mr. Benham received from Mr. Tran and Suncor IP Legal was intended to encompass all of the concepts captured within Nick's Patent Filing and was expressed as such. As there is evidence as to the concerns Mr. Tran voiced to other Suncor leaders respecting Mr. Benham's conduct, I find that by August 13, 2019, Mr. Benham had been advised to be very cautious about referencing Nick's Patent Filing or the contents of Nick's Patent Filing within Suncor, which would include the co-processing of plastics and bio renewables. That finding is consistent with Mr. Tran's evidence and his internal communications expressing concern regarding Mr. Benham's conduct.

[53] Although Suncor IP legal requested a copy of Nick's Patent Filing in August 2019, Suncor did not receive a copy of Nick's Patent Filing until May 10, 2020. As a result, until May 10, 2020, other than what was disclosed to Suncor by Mr. Benham, Suncor had no information as to the content of Nick's Patent Filing from which to assess the risk of intellectual property contamination or infringement.

[54] Mr. Benham's evidence was that he did not read Nick's Patent Filing; however, based on his communications with Suncor, I am satisfied that by late 2018 Mr. Benham knew that Nick was working on a patent that related to ITP and that incorporated the co-processing of plastics and bio renewables as alternate feedstocks in the ITP process. Mr. Benham described Nick's Patent Filing as "the biofuels and plastic recycling patent filing" targeted at minimization of the carbon footprint. He described Nick's Patent Filing as distinct but complementary to the ITP Patent. Although Mr. Benham's evidence at trial was that he gave no technical input and was not involved in Nick's patenting process, I find that Mr. Benham knew in late 2018 and early 2019 that Nick was working

on a patent that was complementary to the ITP Patent and was sufficiently aware of its contents and direction to understand its relationship to the ITP Patent.

[55] After August 2019, Mr. Benham continued to promote the use of Nick's Patent Filing both in the context of the Devon Pilot Project and the EBI project. For example, in a communication on March 3, 2020 to Mr. Pugsley, before Suncor had received Nick's Patent Filing, Mr. Benham alluded to Nick's Patent Filing as a potential overlay to the ITP Patent for biofuel and plastics co-processing. Mr. Benham did not disclose to Mr. Pugsley that the patent filing he was speaking of was Nick's Patent Filing. Instead, Mr. Benham informed Mr. Pugsley that "Suncor has been negotiating access to this patent filing and it could be there is a **fit here enabling Suncor to have greater leverage in gaining support from a licensor such as UOP to enable the EBI / ITP activity**" (emphasis in the original). He also continued to discuss internally the co-processing of bio renewable feedstocks as part of the EBI project and the Devon Pilot Project, including his observations that the association of bio renewable feedstocks with Suncor's bitumen ITP operation were "very synergistic".

[56] On May 10, 2020 Suncor received Nick's Patent Filing from Mr. Benham. In Nick's cover email to Mr. Benham enclosing his Patent Filing, Nick described the features of his Patent Filing as containing a new contacting system and the co-processing of plastic and bio renewable feedstocks. Nick described the contents of his Patent Filing as "synergistic with the operation of ITP as outlined in the [ITP Patent]." Nick concluded by saying that "[t]he technology outlined in [Nick's Patent Filing] has the potential to broaden the applications, economic value and sustainability of SHC technologies. Therefore, the purpose of my disclosure is to facilitate the adoption of this technology."

[57] On May 12, 2020, Mr. Benham forwarded Nick's Patent Filing internally including to Mr. Tran and Mr. Wamboldt. In his cover email, Mr. Benham included a graphic that illustrated the incorporation of biofuel and plastics co-processing as ITP fuel sources as an expanded application of the ITP platform (the Bio Renewables Graphic). He confirmed that Nick's Patent Filing covered biofuel co-processing and plastics recycling co-processing within SHC systems in general and described that it facilitated the broad integration of alternate fuel sources creating the opportunity to promote ITP as having "green" benefits.

[58] Both Mr. Tran and Mr. Wamboldt testified that they did not review Nick's Patent Filing. Mr. Tran was concerned that Mr. Benham again was raising Nick's Patent Filing within Suncor. He therefore followed up with Suncor IP legal. On May 13, 2020, Mr. Tran directed Mr. Benham to gain alignment on ITP with Mr. Pugsley; he did not otherwise address Mr. Benham's use of the Bio Renewables Graphic. Mr. Tran did not recall having any further conversation with Mr. Benham at that time; however, he remained concerned about Mr. Benham's conflict of interest and the risk of intellectual property contamination.

[59] Mr. Wamboldt's evidence was that he understood that Nick's Patent Filing was leveraged off Suncor's ITP Patent using different feedstocks. He perceived Mr. Benham's May 12, 2020 email as Mr. Benham escalating his desire to have Suncor use Nick's Patent Filing. Mr. Wamboldt was concerned that Mr. Benham was in a conflict of interest. On May 13, 2020, Mr. Wamboldt replied to Mr. Benham as follows:

I am not entirely sure what the ask is here. Proposed messaging to whom? What associated activities?

Todd is leading the efforts to manage the IP and licensing associated with this technology area. Please ensure you are coordinating activities with him. At some point it may be necessary for you to recuse yourself given the conflict of interest represented by your son.

[60] Mr. Wamboldt's evidence was that his email to Mr. Benham arose out of frustration over the amount of correspondence Mr. Benham was sending proposing that Suncor incorporate concepts contained in Nick's Patent Filing. Mr. Wamboldt testified that Mr. Benham was "pitching quite hard" to pursue plastics conversion, something Suncor was not pursuing at that time. Mr. Wamboldt testified that his purpose in sending his May 13, 2020 email to Mr. Benham was to signal that escalating the idea of using Nick's Patent Filing was not the way to move it forward and that he should coordinate with Mr. Pugsley who was responsible for incorporating ITP into the Devon Pilot Project. Mr. Tran, Mr. Wamboldt and Mr. Pugsley all testified to being concerned that Mr. Benham was promoting concepts in Nick's Patent Filing.

[61] Mr. Benham's follow on communications regarding the EBI project and the Devon Pilot Project incorporated the Bio Renewables Graphic.

[62] After receiving Nick's Patent Filing, Suncor commenced negotiations with Nick. Mr. Benham was not involved in these discussions in any way but was aware that the negotiations were ongoing.

[63] On July 27, 2020, Mr. Benham circulated a July 26, 2020 email from Nick to a number of Suncor employees including Mr. Tran. The email contained Nick's observations on a paper regarding the co-processing of plastic waste. Nick expressed the opinion that the paper "clearly supports the opportunity in slurry phase cracking for plastics waste management." In his forwarding email, Mr. Benham noted that ITP technology provided "an excellent bridge to integrate these "green" objectives into existing refining assets and marketing infrastructure."

[64] Upon receiving Mr. Benham's July 27, 2020 email, Mr. Tran notified all recipients and Mr. Benham that "[a]s we are still working through some IP issues with ITP, I would ask that the team refrain from providing or accepting information from or discussing with any external parties until the issues are resolved." Mr. Tran's evidence was that it caused him a lot of concern that Mr. Benham did not heed his advice or the directions from Suncor IP legal to protect Suncor's intellectual property by avoiding any conflict of interest or the contamination of Suncor's or Nick's intellectual property. To Mr. Benham alone, Mr. Tran wrote:

It is prudent for us to ensure Suncor IP and external IP are not contaminated. As you are aware, legal has questions on Nick Benham's patents wrt ITP and Suncor's information. As such, I don't think it would be a good idea for you to get Nick's thoughts on ITP and then pass on internally. Until we have clarified the IP situation between Nick Benham and Suncor, you should refrain from taking any actions that could result in, or be perceived as, contaminating Suncor IP/confidential information.

[65] Mr. Benham did not directly respond to Mr. Tran's July 27, 2020 caution. In a follow up communication on July 28, 2020, Mr. Tran told Mr. Benham "[a]s ITP is quite sensitive, please

do not disclose or exchange any information to any external parties until I am aligned with the activities”. Mr. Tran also took additional steps to stop the circulation of Nick’s email within Suncor including communicating with Mr. Pugsley as follows:

You are aware that we are working on a few issues wrt ITP IP relating to Nick Benham. I am concerned that, as this email chain started with Nick Benham’s email, any further discussions within Suncor on this topic, even though we have discussed internally plastic pyrolysis/renewable, etc, could be incorrectly perceived as plastic pyrolysis at Suncor started with this email.

As the Tech Dev lead on this, would you reach out to the team members who are not familiar with this and stop the discussion on this topic on this email chain? We can discuss more in our 1:1.

[66] Mr. Benham continued to receive information from Nick regarding plastic waste including Nick’s observations on publicly available information.

[67] On September 8, 2020, Mr. Benham perpetuated the circulation of Nick’s July 26, 2020 email and enclosed paper relating to the pyrolysis of plastic waste, sending it to Mr. Tran, Mr. Pugsley, Mr. Wamboldt and others. Mr. Benham expressed the view that incorporating alternate fuels within the ITP platform and within the EBI project could address the federal government’s plastics recycling target and could improve EBI project economics.

[68] Mr. Tran replied to Mr. Benham that same day stating:

Thx for looking forward to the future potentials of ITP. However, to make sure we have absolute clarity and no contamination between Suncor work and Nick’s work, you should compartmentalize the two areas very clearly, both at work and at home. For instance, please do not discuss details of ITP with Nick and do not share Nick’s thoughts/discussions with the Suncor team.

[69] Mr. Tran’s evidence was that Suncor was in the process of reviewing Nick’s Patent Filing. He expected Mr. Benham to have separated his work from Nick’s after having been warned about intellectual property contamination in July 2020. He believed the implications from Mr. Benham’s continued circulation of Nick’s work included the risk of Suncor infringing Nick’s Patent Filing and the risk to Suncor of losing technology it had committed significant resources to develop.

[70] Mr. Benham acknowledged Mr. Tran’s email on September 9, 2020. He expressed concern regarding the economic health of the EBI project and included the Bio Renewables Graphic. Mr. Benham also incorporated the Bio Renewables Graphic into the training package for the Devon Pilot Project.

[71] In late 2020 and early 2021, Mr. Tran discussed with others his concerns regarding Mr. Benham’s ongoing role with the Devon Pilot Project given the issues relating to Nick’s Patent Filing and Mr. Benham’s efforts to expand the scope of the Devon Pilot Project to incorporate the co-processing of plastics and bio renewables. Mr. Tran’s evidence was that he did not feel that Mr. Benham understood the risks to Suncor of the potential contamination of Suncor’s intellectual property, particularly when Mr. Benham was aware that Suncor was in ongoing negotiations with Nick regarding his Patent Filing.

[72] On February 1, 2021, Mr. Tran communicated to Mr. Benham that he was being removed from the Devon Pilot Project team. His decision to do so related directly to Mr. Benham’s failure

to comply with the directions he had been given to maintain separation between Suncor's work and Nick's, including circulating within Suncor the Bio Renewables Graphic. Mr. Tran confirmed his conversation with Mr. Benham in an email on February 2, 2021 in which he stated:

Over the past couple of months you have continued to discuss the technology described in your son's patent application with other stakeholders, both internal and external to Suncor. This has continued despite our direction to avoid all communications relative to your son's patent given Suncor's significant concerns about a conflict of interest. As a result, to ensure Suncor's interests are protected and the conflict of interest is managed, you will be removed from the ITP project. This means that you will no longer be involved in technical reviews related to the ITP technology, should not access Suncor documents related to ITP technology and should cease all communications about the ITP pilot project or related technologies and potential advancements unless specifically requested by me. **There is an ongoing review into the conflict of interest related to this matter.**

(emphasis added)

[73] Mr. Tran's summary of his February 1, 2021 meeting with Mr. Benham reflects that Mr. Benham admitted that there were "overlaps" between Nick's Patent Filing and Mr. Benham's work but also that Mr. Benham believed that because information regarding plastic, biofuels and contact systems was in the public domain, he did not have concerns discussing that information with Suncor personnel. In a subsequent email to Mr. Benham on February 3, 2021, Mr. Tran instructed Mr. Benham to involve him if any of Mr. Benham's conversations led to a discussion of plastics and bio-renewables "and anything that might relate to IP areas of concern".

[74] In February and early March, 2021, Mr. Benham expressed to Mr. Tran that his removal from the Devon Pilot Project team was a reflection of internal disagreements between Enterprise TD and Enterprise TS personnel over roles and responsibilities. He maintained that opinion at trial, that the issue was one of internal politics and differing views as to authorities and accountabilities. He also expressed concern with the suggestion that he discussed Nick's Patent Filing, noting that his discussion about Nick's Patent Filing occurred only after it was in the public domain.

[75] On February 18, 2021, Mr. Benham provided Mr. Tran with written "formal" notification of his intention to retire from Suncor as of August 18, 2021.

[76] Suncor terminated Mr. Benham's employment for cause on March 18, 2021. The letter of termination refers to Mr. Tran having informed Mr. Benham on February 1, 2021 that there was an investigation into his conduct. In the termination letter, Suncor stated that the investigation into Mr. Benham's conduct disclosed that:

- i. In 2018 he failed to report a potential invention using an Invention Report Form and that the invention formed part of Nick's Patent Filing;
- ii. Despite being asked not to and before noting any conflict of interest, he repeatedly advocated for the implementation of the potential invention captured in Nick's Patent Filing, with the result that the potential invention was incorporated into the Devon Pilot Project; and

- iii. after urging Suncor to acquire Nick's Patent Filing and despite being instructed not to discuss Nick's Patent Filing, he continued to broadly advocate within Suncor for the adoption of potentially inventive concepts that appeared in Nick's Patent Filing.

[77] Suncor expressed the view that Mr. Benham's actions amounted to a serious violation of Suncor's Standards of Business Conduct, Conflict of Interest PG&S, and Suncor's Intellectual Property Standard (IP Standard).

[78] According to Mr. Tran, given the number and magnitude of concerns Suncor had regarding Mr. Benham's conduct, he had no confidence that Mr. Benham understood his obligations to Suncor to protect its confidential information and intellectual property. Mr. Benham had been reminded multiple times of his role respecting ITP. He had been reminded of the principles and policies that applied to his work and of his obligation to protect Suncor's confidential information and intellectual property. As a senior professional within the organization, Mr. Benham was expected to understand those policies and the boundaries that they established and to abide by them.

[79] On September 24, 2021, Suncor reached an agreement with Nick assigning Nick's Patent Filing to Suncor in exchange for an immediate payment of \$75,000 and milestone payments on the commissioning of facilities that implemented the concepts contained in Nick's Patent Filing. No milestone payments were ever triggered.

### **The Surrounding Circumstances**

[80] Employers have the right to set ethical, professional and operational standards for their employees. Doing so not only falls within an employer's management rights, it is also integral to good governance: *Poliquin* at para 45. Under the common law, an employee is required to obey policies that are reasonable, unambiguous, accessible and published: *Stonham v Recycling Worx Inc*, 2023 ABKB 629 at para 60 citing *Smith v Vauxhall Co-Op Petroleum Limited*, 2017 ABQB 525 at para 28 and *Cicalese v Saipem Canada Inc*, 2018 ABQB 835 at para 27.

[81] As would be expected of a major organization, Suncor had a comprehensive suite of policies in place that established expectations for how its employees are to conduct Suncor's business and protect its confidential information. The umbrella policy is Suncor's Standards of Business Conduct. At the material time, the Standards of Business Conduct encompassed 11 separate Policy Guidance and Standards (PG&S) including the IP Standard and Conflict of Interest PG&S. These PG&S were available to Mr. Benham on the company's intranet and employees received specific training on the PG&S from time to time.

[82] Suncor's IP Standard confirms Suncor's right to possess, dispose of, and control its intellectual property. The IP Standard puts employees on notice that Suncor's rights can be permanently lost if not protected. Section 2.4 of Suncor's IP Standard sets out an employee's confidentiality obligations relating to technical information created in the course of their employment: before Suncor's confidential information can be disclosed to a third party, the employee must obtain approval from a business unit leader, and a non-disclosure agreement must be in place.

[83] In addition, Suncor's Conflict of Interest PG&S requires that employees be diligent in protecting Suncor's intellectual property and avoid the infringement of the intellectual property of

others. It directs employees to consult with and obtain approval from their supervisor or Suncor legal before receiving or disclosing any confidential information to avoid the risk of intellectual property contamination. It puts employees on notice that any employee who breaches the Conflict of Interest PG&S is subject to disciplinary action which may include immediate dismissal.

[84] Suncor employees were required to annually attest to compliance with its Standards of Business Conduct by reviewing The Way We Do Business booklet (the “Booklet”). A 2017 version of the Booklet was produced as an agreed exhibit at trial. It contains a summary of all of Suncor’s PG&S that make up the Standards of Business Conduct and includes hyperlinks to those documents. It is accessibly written and readily available. In addition to providing broad guidance, it directs employees to consult with their leader and Suncor’s legal department before disclosing Suncor’s confidential information, and to talk to their leader about any circumstances that could be perceived as a conflict of interest.

[85] Mr. Benham’s evidence was that he thought he had the authority to approve Nick’s involvement with the ITP Patent given his job level within the Suncor organization. I reject that evidence. The IP Standard unequivocally states that before confidential information can be disclosed, approval is required from an employee’s leader. I find that Mr. Benham lacked the necessary approval to involve Nick in the development of the ITP Patent and was aware of that fact. I also find that Mr. Benham was aware after November 2018 that Nick continued working on ITP and that Mr. Benham continued to collaborate with Nick on the ITP Patent and its potential without seeking approval to do so or seeking input from Suncor IP legal on how to ensure that Suncor’s interests were protected. I find that Mr. Benham lacked the necessary approval to continue to work with Nick on the ITP Patent after it was filed despite having been specifically told that he could not disclose Suncor’s confidential information to anyone without Suncor’s permission.

[86] It is important context to note that Suncor’s confidential information is not just its intellectual property. Confidential information encompasses all of Suncor’s business information that is not in the public domain, including project economics and timelines, and its business goals and objectives.

[87] Suncor’s policies regarding its confidential information were clear and accessible. Mr. Benham was required to consult with his leader in advance and to obtain approval before releasing confidential information. He similarly was required to consult his leader regarding any potential conflict of interest, and to prevent the contamination of intellectual property. Mr. Benham had access to his leader at least bi-weekly. Mr. Benham could have clarified or sought approval to continue his collaboration with Nick after his June 20, 2018 discussion with Suncor IP legal or after the Reprimand. He did not do so. The evidence satisfies me that Mr. Benham continued to collaborate with Nick relating to the ITP Patent, including generating ideas relating to jet shear in July 2018 and the co-processing of bio renewables in late 2018, without the approval of his supervisor to do so.

[88] Mr. Benham’s conduct does not reflect a single incident of an employee displaying poor judgment, corrected after it being brought to his attention. Mr. Benham’s actions show either a lack of understanding or a careless disregard of the obligations he owed to Suncor to protect its confidential information. I am satisfied that Mr. Benham’s ongoing collaboration with Nick

regarding the ITP Patent was fundamentally inconsistent with his obligations to Suncor and seriously impaired the trust and confidence that Suncor had in him. He failed to protect for Suncor's benefit potential enhancements to or expansions of the ITP Patent. In addition, he placed himself in a conflict of interest, failed to make timely disclosure of that conflict of interest, and failed to maintain a distinction between Suncor's work and interests and Nick's.

[89] Mr. Benham was repeatedly cautioned not to disclose Nick's work within Suncor and to maintain separation between Suncor's work and Nick's, including in his meeting with Mr. Tran and Suncor IP legal on August 13, 2019, Mr. Tran's communications of July 27, July 28, 2020 and September 8, 2020, Mr. Benham's year-end review in 2020, and Mr. Wamboldt's May 13, 2020 email. He did not heed that direction or seek clarification before acting, even when aware that Suncor was engaged in discussions with Nick regarding his Patent Filing.

[90] Mr. Tran's evidence was that having provided Mr. Benham with guidance regarding his duties to protect Suncor's intellectual property, he expected Mr. Benham to ensure compliance. Mr. Benham was a long-service employee of Suncor with no material concerns in his employment history before 2018. Mr. Benham was in a responsible position, had access to Suncor confidential and critical business information particularly regarding the implementation of ITP in the Devon Pilot Project and EBI project. Given Mr. Benham's seniority within the organization and experience with patenting and intellectual property, it was reasonable to expect him to understand and comply with his obligations regarding protecting Suncor's intellectual property. Mr. Benham's lack of diligence to heed the warnings he was given, his ongoing failure to separate Suncor's work from Nick's, his circulation of Nick's research within Suncor, and his ongoing promotion of Nick's Patent Filing all demonstrate an ongoing breach of the obligations he owed to Suncor. His failure to heed Suncor's directions not only resulted in significant effort within Suncor to manage the potential ramifications of his actions, but the actual cost of acquiring Nick's Patent Filing.

[91] The Plaintiff submits that Mr. Benham's violation of Suncor policies was mitigated when he provided both Mr. Tran and Mr. Wamboldt the Bio Renewables Graphic. Neither leader expressly directed Mr. Benham not to use the Bio Renewables Graphic. Equally, neither leader approved its use. Both leaders continued to express to Mr. Benham their concern regarding his promotion of concepts contained in Nick's Patent Filing and his conflict of interest. His superiors were entitled to rely on Mr. Benham's professional judgment to bring his actions in line with those directions.

[92] The Plaintiff submits that the technical concepts Mr. Benham discussed with Nick were not unique to Nick's Patent Filing and did not, for example, preclude Suncor from filing its own patent regarding the co-processing of biofuels. They submit that the concept of co-processing of bio renewable feedstocks existed broadly within industry, within the social and political discourse at the time, and within Suncor's broader business. That argument overlooks the fact that any work Mr. Benham did or concepts he developed regarding jet shear or the co-processing of bio renewables should have been for Suncor's benefit and protected as such.

[93] The Plaintiff also submits that Nick's Patent Filing does not capture the jet shear concept. I was not provided the technical evidence to resolve that question, nor do I need to resolve that question to determine whether Suncor had just cause to terminate Mr. Benham's employment. The court is entitled to consider the cumulative effect of an employee's conduct in determining whether

termination of employment for cause was justified: *Poliquin* at para 73. I find that Mr. Benham violated Suncor's Standards of Business Conduct both when he involved Nick in the development of the ITP Patent in 2018 and thereafter when he continued to collaborate with Nick regarding ITP including on the topics of jet shear and the co-processing bio renewables. In addition, I find that Mr. Benham placed himself in a conflict of interest by promoting Suncor's use of Nick's Patent Filing. Mr. Benham was obligated to avoid behaviours that created, or had the potential to create, a conflict between the duties and obligations he owed to Suncor and his personal interests. Promoting the use of Nick's Patent Filing within Suncor was fundamentally inconsistent with his obligations to Suncor and a violation of an essential term of his employment contract.

[94] I conclude that Mr. Benham's conduct demonstrates an ongoing breach of duties he owed to Suncor as set out in Suncor's Standards of Business Conduct.

### **Was Suncor's Response Proportionate?**

[95] For an employer to be justified in terminating an employee's employment for cause, the decision to do so must be contextually proportionate to the misconduct. There must be a balance between the magnitude and implications of the employee's conduct and the decision to terminate their employment: *McKinley* at para 53.

[96] Mr. Benham was informed by Mr. Tran on February 1, 2021 that Suncor was reviewing his conflict of interest. Mr. Benham was not formally informed that Suncor constituted an Investigation Committee to review his conduct. He was never interviewed by a member of the Investigation Committee or asked for his response. Little information regarding the Investigation Committee was available at trial. Mr. Tran's evidence was that he was not directly involved in the review of Mr. Benham's conduct although he was accountable, in consultation with his Vice President, for the decision to terminate Mr. Benham's employment.

[97] The Investigation Committee appears to have had two mandates: to conduct a technical review of Nick's Patent Filing and to review Mr. Benham's conduct. The Investigation Committee generated a Fact Sheet dated February 25, 2021 (Fact Sheet) setting out the conclusions reached. In it, the Investigation Committee set out Mr. Benham's long service with Suncor and his role within the organization. It reviewed Mr. Benham's conduct that led to the Reprimand and his conduct after the Reprimand.

[98] At trial, both Mr. Pugsley and Mr. Ochoa, Suncor's Manager of Renewable Liquid Fuels, testified that they were asked to conduct or contribute to the technical review of Nick's Patent Filing. Neither were asked to contribute to the review Mr. Benham's conduct. Based on the contents of the Fact Sheet and the evidence at trial, the technical review appears to have addressed whether Nick's Patent Filing incorporated Suncor confidential information or included concepts that Mr. Benham promoted within Suncor, and whether Nick's Patent Filing was of value to Suncor.

[99] The conclusions expressed in the Fact Sheet include that:

1. Mr. Benham delayed the disclosure to Suncor of Nick's preliminary patent and Patent Filing for several months.

2. Mr. Benham promoted Suncor's use of Nick's Patent Filing despite several conversations and clear warnings against doing so.
3. Nick's Patent Filing appears to have been based on Suncor confidential information disclosed by Mr. Benham, although there was no direct evidence of that.
4. The jet shear concept Mr. Benham identified to Mr. Pugsley in the summer of 2018 was one of Nick's Patent Filing's "main features" and formed the basis for a design change Mr. Benham incorporated into the Devon Pilot Project.
5. Mr. Benham was interested in the co-processing of bio renewables before Nick's Patent Filing and incorporated the concept of co-processing bio renewables into the ITP training deck after Nick's Patent Filing.

The Investigation Committee identified the implications to Suncor of Mr. Benham's actions as including that Suncor could inadvertently infringe Nick's Patent Filing, and that Suncor lost the opportunity to file its own patent regarding jet shear. In addition to these concerns, the Investigation Committee identified that Mr. Benham was promoting ideas that would amend the scope, schedule and cost of the Devon Pilot Project without going through proper approvals.

[100] Mr. Tran's evidence was that he did not conduct his own technical analysis of Nick's Patent Filing and relied on the technical review done by Mr. Pugsley and Mr. Ochoa. I find that it was reasonable for him to do so. Regarding Mr. Benham's conduct, he relied on the Fact Sheet and his involvement with Mr. Benham in reaching the decision to terminate Mr. Benham's employment for cause.

[101] The Plaintiff submits that there are a number of concerns as to the sufficiency of Suncor's investigation into Mr. Benham's conduct. Those concerns include the lack of transparency into the investigation itself including not being told who comprised the Investigation Committee, the lack of direct evidence that Nick's Patent Filing was based on confidential Suncor information, and concerns with Mr. Pugsley's involvement in the technical review given a history of misalignment between Mr. Pugsley and Mr. Benham regarding authority over Devon Pilot Project and the implementation of ITP.

[102] Mr. Benham submits that the concept of co-processing bio renewables was brought to him by others within Suncor, that he was transparent with both Mr. Tran and Mr. Wamboldt as to his use of the Bio Renewable Graphic relating to ITP, and that if he could be criticized it would be for over explaining rather than concealing his work. He also submits that he stopped circulating Nick's work after the last warning on September 8, 2020.

[103] Mr. Benham's position overlooks a number of important features with respect to his conduct between 2018 and 2021, including that he collaborated with Nick regarding jet shear technology but did not protect the idea for Suncor's benefit; that by late 2018 and prior to Nick's Patent Filing, he was interested in the co-processing of bio renewables in the context of ITP but did not protect the idea for Suncor's benefit; that he continued to collaborate with Nick on potential enhancements to or expansion of the ITP Patent without approval to do so, including circulating Nick's commentary when he was aware that Nick had filed a preliminary patent and then Nick's Patent Filing; and that he promoted the use of Nick's Patent Filing within Suncor, and continued to do so even after he was cautioned against it.

[104] Although I have no doubt that Mr. Benham was not acting with an intention to cause harm to Suncor, his conduct reflects a lack of awareness and understanding as to the fundamental obligations he owed his employer. I find that Suncor's decision to terminate Mr. Benham's employment was in proportion to his conduct, particularly given Mr. Benham's seniority. Because Mr. Benham's role directly involved the development and protection of confidential information and intellectual property within Suncor, Mr. Benham's conduct was incompatible with the reasonable expectations arising from the employment relationship.

[105] Suncor's termination of Mr. Benham's employment for cause was lawful and justified.

### **Reasonable Notice**

[106] In the event that I am wrong and that Suncor did not have just cause to terminate Mr. Benham's employment, I find that Mr. Benham is entitled to a period of notice up to but not extending past the date of his intended retirement on August 18, 2021.

[107] Mr. Benham was 66 years old when his employment was terminated. Prior to 2017, Mr. Benham began winding down his responsibilities transferring the oversight of FCC and HFA to others within Suncor. In 2019 Mr. Benham indicated an intention to retire but delayed that decision given the restrictions during the pandemic. Mr. Benham then planned to work significantly reduced hours (50-60%) corresponding with the anticipated start-up of the Devon Pilot Project.

[108] Because he was removed from the Devon Pilot Project in January 2021 and aware of Suncor's ongoing investigation into his conduct, Mr. Benham submitted his notice of intention to retire effective August 18, 2021. Mr. Benham's evidence was that Suncor "never processed" his retirement and instead proceeded with the termination of his employment for cause.

[109] At the time he submitted his resignation, Mr. Benham's view was that 100% of his work related to the operation of SHC in the Devon Pilot Project and EBI. Mr. Tran's evidence was that Mr. Benham continued to have meaningful work to do at Suncor and a meaningful role to play even after his removal from the Devon Pilot Project.

[110] There was no evidence that Mr. Benham felt compelled to resign or that his decision to retire was anything but voluntary. While undoubtedly Mr. Benham was frustrated by what he saw as a breakdown over the roles and responsibilities over the Devon Pilot Project and what he feels were unwarranted accusations against him, I find that his decision to retire was voluntary, clear and unequivocal. It remained his stated intention at the time that his employment was terminated. His actions following termination of his employment were consistent with that intention. He took no meaningful steps to find alternate employment or to re-invent himself as a consultant in the refinery industry. Mr. Benham's evidence was that after his employment was terminated, he had a discussion with only one organization about potential work; he took no other steps to find employment or to generate an income. Although Mr. Benham's evidence was that he felt it was obvious that Suncor had terminated his employment for cause and therefore that looking for work would be futile, nonetheless, he made no material efforts to identify alternate employment or consulting opportunities.

[111] I find some guidance in my decision about reasonable notice from the case law discussing resignation. A finding of resignation requires both the assessment of an employee's subjective

intent and objective conduct. The court is to consider whether the employee intended to resign and whether the employee's words and actions, objectively viewed, support a finding that they resigned: *Beggs v Westport Foods Ltd*, 2011 BCCA 76 at para 36.

[112] Mr. Benham's decision to retire was made in the face of an investigation into his conduct. I am satisfied that it reflected his current intention. His communication was clear and unequivocal and while no doubt motivated by his frustration with the circumstances he found himself in, there is no evidence that his decision to retire was based on anything but his free will to do so. Even though Suncor did not process Mr. Benham's retirement notice in the face of an ongoing investigation into his conduct, the evidence satisfies me that in the event Mr. Benham was entitled to notice of termination of his employment, the applicable notice period is five months to August 18, 2021.

### **Implications of the Termination of Mr. Benham's Employment on Stock Options and RSUs**

[113] The parties asked that I address the terms of the Stock Option Plans and RSU Plans under which Mr. Benham received options and RSUs from time to time. Before addressing the Plans, it bears noting that the framework for determining the status of Mr. Benham's options or RSUs is in the context of Suncor's termination of his employment on March 18, 2021, whether lawfully for cause or on reasonable notice. There is no scenario where the status of Mr. Benham's options or RSUs should be assessed based on his voluntary retirement. Suncor was entitled to terminate Mr. Benham's employment and it did. The issue in this trial was whether Mr. Benham was entitled to notice of that termination or whether Suncor could terminate his employment for cause.

[114] Mr. Benham received RSUs from Suncor on February 15, 2019, February 18, 2020 and February 16, 2021. Each grant matured on December 31<sup>st</sup> of the 3<sup>rd</sup> year following the year in which they were issued, a period of time known in the RSU Plan as the Restricted Period.

[115] Under Articles 2.3(d) and 3.8 of Suncor's RSU Plan effective January 1, 2009 and governing the 2019 grant, if Suncor terminated a grant recipient's employment, whether or not for cause, before the end of the Restricted Period, the RSUs were cancelled as of the date the employment was terminated. Under the terms of the RSU Plan, Mr. Benham's RSUs granted in 2019 were cancelled as of March 18, 2021 whether his employment was terminated for cause or terminated with reasonable notice.

[116] For the RSUs granted after February 4, 2020, the same consequence follows; however, amendments to Article 3.8 provided that a recipient whose employment was terminated for cause after the Restricted Period but before the Award Payout Date (no later than March 31 following the end of the Restricted Period) was not entitled to payout. Therefore, if a person's employment was terminated for cause between the maturity date and the payout date, the RSUs were cancelled, disentitling the recipient to pay out. Based on the language of the RSU Plans, Mr. Benham's RSUs were cancelled effective March 18, 2021 when Suncor terminated his employment. In the event he had RSUs that had matured but were not yet paid, as I have concluded that the termination of his employment for cause was lawful, Mr. Benham was not entitled to pay out.

[117] Considering the Stock Option Plans, Articles 2.3(c) and 2.9 of the Stock Option Agreements provide that where a participant's employment is terminated for cause, options are

cancelled immediately as of the date notice of termination is given. Where, however, a participant's employment is terminated other than for cause, options that are exercisable as of the date notice of termination is given can be exercised for the shorter of three months or the expiry of the exercise term of those options. Any options that are not exercisable as of the termination date are cancelled. The termination date does not include any period of reasonable or statutory notice. As I have concluded that the termination of Mr. Benham's employment for cause was lawful, any options Mr. Benham was issued were cancelled as of March 18, 2021.

**Costs**

[118] As the successful party, Suncor is entitled to costs. If the parties are unable to agree on costs, they can provide their positions in writing. Suncor's position shall be provided within 30 days from the date of this decision. Mr. Benham's response shall be provided two weeks following. The parties' submissions are not to exceed five pages.

Heard on the 23<sup>rd</sup> day of February to the 6<sup>th</sup> day of March, 2026.

**Dated** at the City of Calgary, Alberta this 12<sup>th</sup> day of May, 2026.

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**N.F. Dilts**  
**J.C.K.B.A.**

**Appearances:**

William Katz and Catharine Duguay  
for the Plaintiff

April Kosten and Carly Kist  
for the Defendant