

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kinnaird v. Response Biomedical Corp.*,
2026 BCSC 1702

Date: 20260904
Docket: S251619
Registry: Vancouver

Between:

Dr. Barbara Kinnaird

Plaintiff

And

Response Biomedical Corp.

Defendant

And

Dr. Barbara Kinnaird

Defendant by way of Counterclaim

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

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of Counterclaim:

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Place and Dates of Summary Trial:

Vancouver, B.C.
July 27-29, 2026

Place and Date of Judgment:

Vancouver, B.C.
September 4, 2026

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I. INTRODUCTION

[1] The plaintiff, Dr. Barbara Kinnaird, was formerly employed by the defendant, Response Biomedical Corp. (“RBC”), as its chief executive officer (“CEO”). In December 2024, RBC terminated her employment and paid her eight weeks’ severance, the statutory minimum. She brings this action seeking to enforce one of the terms of her written employment contract, pursuant to which she was supposed to receive 24 months’ severance if terminated without cause. In addition to the claim for more severance pay, she also seeks to be compensated in damages for the mental distress that she says RBC caused her leading up to and following the termination, as well as aggravated and punitive damages.

[2] In response to the claim, RBC contends that the written employment contract that Dr. Kinnaird relies upon is unenforceable because, while serving as CEO, she wrongfully participated in the directors’ vote to approve it, in breach of s. 149 of the *Business Corporations Act*, SBC 2002, c 57 [BCBCA], and RBC’s articles. In addition, RBC asserts that it has since learned that she had, while serving as CEO, improperly pursued other business ventures for her own personal benefit, as well as, in some cases, for the benefit of a competitor. RBC contends that, in doing so, she breached the terms of her employment agreement and her fiduciary duties, in a manner sufficient to give rise to just cause for termination and entitling RBC to damages, which it seeks by way of counterclaim.

[3] The matter is scheduled to proceed to trial for five days, beginning on May 17, 2027. In the meantime, Dr. Kinnaird applies for judgment by way of summary trial. She says the matter lends itself to summary disposition, inasmuch as the essential facts are not in dispute and RBC’s defences and counterclaim are manifestly devoid of merit. Accordingly, she seeks an order awarding her damages, as claimed, and dismissing the counterclaim.

[4] RBC responds that the action cannot properly be determined summarily on the record before the Court. It seeks an order dismissing the application and

remitting the matter to the trial list, or alternatively, if judgment can be rendered, an order dismissing the claim.

[5] For the reasons that follow, I have concluded that the matter cannot properly be resolved summarily on the record before me and should therefore proceed to trial.

II. FACTUAL BACKGROUND

A. Dr. Kinnaird's Employment with RBC

[6] RBC is a company formed under the laws of British Columbia. It has been operating for over 30 years in Vancouver and currently has about 63 full-time employees. It is in the business of designing, manufacturing and selling diagnostic tests used primarily for acute medical conditions such as heart attacks, heart failure, deep vein thrombosis and sepsis.

[7] Dr. Kinnaird has a PhD in microbiology and immunology. She began working for RBC, then a public company, in August 2004. While with RBC, she came to hold a variety of managerial positions and also served for a time on RBC's board of directors.

[8] On May 19, 2015, Dr. Kinnaird, while serving on the board of directors, was promoted from chief operating officer ("COO") to CEO. Soon after that, she asked to renegotiate the terms of her employment contract. RBC was represented in that negotiation by the board's compensation committee, which consisted of three other directors. They retained legal counsel to assist with preparing and reviewing the draft agreement. Dr. Kinnaird retained her own private lawyer for that purpose. The compensation committee appears to have signed off on the general framework for Dr. Kinnaird's new employment contract at a meeting held in November 2015.

[9] On December 22, 2015, William Adams, then RBC's chief financial officer ("CFO") and corporate secretary, sent an email to Dr. Kinnaird and the other six board members, ostensibly on behalf of himself and Dr. Kinnaird, seeking their

signatures on a series of consent resolutions, including one to approve Dr. Kinnaird's proposed new employment contract. The email stated as follows:

Dear BoD Members,

Apologies for the short notice on the attached consent resolutions and we truly appreciate your patience here. The time crunch is due to our Black Out period starting this Wednesday Dec 23rd and thus we require your signature before then to help us support our key employees and Managers. Moving forward, we will be giving the Compensation Committee much more time and complete Information when approval is required. Lew [Lewis Shuster], Tony [Anthony Holler] and Peter [Thompson] have kindly signed off on this for us today.

The BoD resolution is contingent on the Compensation Committee approval and consent resolution.

However, due to time constraints, we are asking for the two consent resolutions to be signed in parallel. Could you please sign and email back the signature pages. If you can only respond with an e-mail approval at this time, we can follow-up with a signature at a more convenient time for you.

The topics of the consents are:

1. Approval of Barb's employment agreement the terms of which fall within the approved parameters discussed by the Committee in November.
2. Approval of short term option grant packages for new and long standing high performing key employees & managers that deserve incentive recognition. Note: we have not issued options at the last two BoD meetings due to being in an extended Blackout.
3. Approval of 25K options each for Barb and Bill that will vest upon the release of the \$580K Alexandria deposit (no later than Jun 30, 2016).

Also attached is an updated spreadsheet that was previously shared with the Comp Committee that shows the details of our granted Stock Options pre and post this grant. There is a color coded summary at the bottom of the spreadsheet showing the details of the proposed grant. We will provide more material in Q1 for consideration by the Compensation Committee once the 2016 budget is approved and prior to our March Board meeting.

Again, apologies for falling outside the normal process but we are doing this to try and provide our key employees incentives as we having [sic] been pushing very hard this year and would like to keep the momentum as we move into 2016.

Barb and Bill

[10] All of the board members, including Dr. Kinnaird, signed the consent resolutions to indicate their approval. Dr. Kinnaird's employment contract was

formally signed on January 12, 2016. Its main terms, including those governing termination and severance, were subsequently reported to its shareholders in its securities filings. At the next annual general meeting of its shareholders, the shareholders were asked on an advisory basis to vote on and approve the compensation packages for RBC's officers, including Dr. Kinnaird's. The resulting vote was over 99% in favour.

[11] Later in 2016, RBC began the process of going private. In 2020, a Chinese *in vitro* diagnostic company known as Runda Medical Technology Co., Ltd. ("Runda"), acquired a controlling interest in RBC's parent company. Two of Runda's directors, Caroline Chan and Hui Liu, eventually became directors of RBC.

[12] Beginning in 2022, RBC's previously strong financial performance faltered. Dr. Kinnaird attributes the downturn to global instability, particularly Russia's invasion of Ukraine and reduced sales in China. On the other hand, RBC's current interim CEO, Anastasios Tsonis, has deposed that Ms. Chan told him that, by late 2024, the board had developed serious concerns about Dr. Kinnaird's "neglect of her duties and responsibilities as CEO, [her] lack of desire and dedication to be the CEO and [RBC's] deteriorating financial and market performance under her leadership."

[13] Indeed, Dr. Kinnaird says that by late 2022 and into 2023, her work environment became toxic due to the ongoing criticism directed at her by Mr. Liu and Ms. Chan, to the point that she became concerned about her job security. According to her, they consistently blamed her unfairly for RBC's poor financial performance.

[14] Dr. Kinnaird acknowledges that she took on some outside professional projects while she was CEO at RBC, which she describes as follows:

- a) serving as a volunteer board member of Acetech, a nonprofit organisation dedicated to providing peer support for other CEOs;
- b) attending a meeting of the Life Science Sector for Global Affairs Canada, an advisory group formed to assist Canada's trade commissioners in deciding where to focus their attention;

- c) participating in two or three meetings per year of the Advisory Committee for Genome BC, a nonprofit organisation supporting genomics research, for which she received a fee of \$700-\$1,000 per meeting;
- d) becoming a subcontractor with Metronomics, a business that provides coaching services for corporate executives (she had hired a coach through Metronomics to assist her during the COVID-19 pandemic but later, with her termination looming in December 2024, she became a subcontractor with a view to taking on paid coaching work herself);
- e) incorporating Quantum Edge Advisors in January 2023 as a vehicle to earn revenue from her coaching endeavours, through which she earned \$13,341 in 2024; and
- f) assisting the CEO of “HyLiDx”, a startup company also in the medical diagnostic technology field, by commenting on its “pitch deck” and otherwise promoting the business to potential investors.

B. The Termination

[15] On December 22, 2024, Ms. Chan sent Dr. Kinnaird a text message asking her to resign as CEO. Ms. Chan followed up with a telephone call to advise Dr. Kinnaird that she was being terminated.

[16] They met in person over breakfast on January 3, 2025. At that meeting, according to Dr. Kinnaird, Ms. Chan urged Dr. Kinnaird to accept a severance payment that was less than her contractual entitlement. Ms. Chan indicated that Dr. Kinnaird may end up with no severance at all because RBC could soon be shut down or it could allege that it had just cause to terminate her. Dr. Kinnaird refused to accept any less than her contractual severance amount.

[17] RBC sent Dr. Kinnaird a formal letter of termination on January 6, 2025. The letter indicated that she would receive eight weeks’ severance, which was paid three days later, on January 9, 2025. In response, Dr. Kinnaird demanded the full 24

months set out in her employment contract. RBC refused to pay any more than it already had.

[18] Following the termination, Dr. Kinnaird went to work for HyLiDx and has since become its CEO.

C. This Litigation

[19] After an unsuccessful attempt at mediation, Dr. Kinnaird commenced this action on March 3, 2025. In its response and counterclaim, RBC alleged, among other things, that the severance provision in the contract was unenforceable and that it had, in any event, just cause for the termination, relying in part on documents that Mr. Tsonis had retrieved from Dr. Kinnaird's former email account following the termination.

[20] On November 13, 2025, Dr. Kinnaird obtained a pre-judgment garnishing order, without notice to RBC, which resulted in \$646,418.86 being paid into court.

[21] On January 6, 2026, Dr. Kinnaird filed a notice of trial, setting the trial for five days commencing May 17, 2027.

[22] RBC's application to set aside the garnishing order was heard by Matthews J. on April 1, 2026. Her reserved decision refusing to set aside the order, indexed as *Kinnaird v. Response Biomedical Corp*, 2026 BCSC 1256, was released on July 7, 2026.

[23] Dr. Kinnaird filed this application on the following day, July 8, 2026.

[24] To date, there have been no examinations for discovery and documentary discovery is only partly complete.

III. DISCUSSION

A. The Suitability Test

[25] The test to be applied in determining whether an action can properly be resolved by way of summary trial was conveniently summarised by Matthews J. in *Saran v. Cartonio, Inc.*, 2020 BCSC 556, aff'd 2020 BCCA 252, as follows:

[30] Supreme Court Rule 9-6(15)(a) states that:

A matter will not be suitable for summary trial if the court is unable to find the facts necessary to decide the issues of fact or law or if it would be unjust to decide the issues summarily.

[31] Whether the necessary facts can be found and whether it would be unjust to decide the issues raised are separate but related questions. In some circumstances it may be unjust to decide a case summarily even if on the whole of the evidence it is possible to find the necessary facts. See *Placer Development Ltd. v. Skyline Explorations Ltd.*, 1985 67 BCLR 366, at 385-386, Court of Appeal; *Foreman v. Foster*, 2001 BCCA 26, at para. 19; and *Creyke v. Creyke*, 2016 BCCA 499, at para. 45.

[32] The onus is on the party who asserts that the matter is not suitable for a determination by a summary trial to demonstrate unsuitability: *Ekins v. Davey*, 2007 BCSC 1630, at para. 24. A party facing a summary trial is obliged to bring forward all of its case or risk having judgment go against it: *Spring Hill Farms Limited Partnership v. Nose*, 2014 BCCA 66.

[33] Conflicting evidence is not necessarily fatal to proceeding summarily. If the conflicting evidence does not prevent the court from making the necessary factual determinations, the court may proceed. In some circumstances despite conflicting evidence, there is enough objective or corroborating evidence for one version of events to permit the court to confidently make findings of fact. See, for example, *Wei v. Mei*, 2018 BCSC 1057, affirmed on other grounds: *Wei v. Li*, 2019 BCCA 114. Where there is a conflict in evidence that cannot be resolved by reference to objective or corroborating evidence, a chambers judge has the option to adjourn the application and order that cross-examination take place or order cross-examination at the summary trial: *Spring Hill Farms Limited Partnership v. Nose*; and *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.*, 1989 36 B.C.L.R. (2d) 202 (C.A.) at para. 72.

[34] However, where there is a "head on" conflict in the evidence regarding an important issue and the court either cannot resolve the issue or cannot resolve the issues without assessing the component's credibility, it will not be suitable for summary determination. A court cannot side step conflicts by relying on only a portion of the record, assuming certain facts or by taking the plaintiff's case at its highest: *Concord Pacific Acquisitions Inc. v. Oei*, 2017 BCSC 236 at para. 50.

[35] It is a particular concern where the evidence conflicts and a subsequent court may be called upon to make findings regarding those facts

giving rise to the risk of inconsistent findings of fact or the subsequent court having difficulty determining what issues remain alive: *Bell v. Levy*, 2010 BCSC 587, appeal dismissed 2011 BCCA 417, citing *Dahl v. Royal Bank of Canada*, 2005 BCSC 1263, at para. 12; and *Otter Farm and Home Cooperative v. Sekhon*, [2001] B.C.J. No. 2338 (C.A.), 2001 BCCA 636.

[36] It is open to courts to draw adverse inferences from gaps in the evidence, but it is not mandatory: *Kingan v. Kingan*, [1995] B.C.J. No. 164 (S.C.) (QL), at para. 40, affirmed 1995 BCWLD 1596 (C.A.).

[37] As summarized in *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30 to 31, citing *Inspiration Management*, whether it would be unjust to proceed summarily depends on the following factors:

- a) the amount involved;
- b) the complexity of the matter;
- c) its urgency;
- d) any prejudice likely to arise by reason of delay;
- e) the cost of taking the case forward to a conventional trial in relation to the amount involved;
- f) the course of the proceedings;
- g) the cost of litigation and the time of the summary trial management conference;
- h) whether credibility is a critical factor in the determination of the dispute;
- i) whether the summary trial may create unnecessary complexity in the resolution of the dispute;
- j) whether the application would result in litigating in slices; and
- k) any other matters which may be relevant in the particular case.

[38] None of these factors are determinative on their own. For example, a case that is not straightforward or has some complexity is not by virtue of that feature automatically unsuitable for summary trial determination: *River Colony Estates General Partnership v. Hee*, 2003 BCSC 1327.

[39] When deciding whether to proceed summarily, a court must interpret the summary trial rule broadly and favourably, consider proportionality, affordability and the timely and just adjudication of claims: *Crest Realty Westside Ltd. v. W & W Parker Enterprises Ltd.*, 2015 BCCA 447, at para. 30.

B. Is this matter suitable for summary disposition?

[26] Among the matters that Matthews J. was required to consider in deciding the application to set aside the garnishing order was the relative strength of

Dr. Kinnaird's claim and RBC's defences on the merits. As she observed, the outcome of the dispute turns essentially on the following two questions;

- a) is RBC's covenant in Dr. Kinnaird's employment contract to pay her 24 months' severance enforceable, given that she participated in the vote to approve it; and
- b) was there just cause for termination?

[27] Due to the limited state of the record before her, Matthews J. was unable to reach any firm conclusions on those questions. She rejected RBC's argument that it had strong defences, for want of evidence to support it. She concluded that the conflicting evidence before her precluded any definitive determination on the merits, in the absence of cross-examination. RBC relies on those observations here, arguing that they amount to a complete answer to this application.

[28] Dr. Kinnaird argues that Matthews J. did not have the benefit of focused submissions on the point, nor of the more extensive record that is now before me. She says that the requisite factual findings can be made on a close examination of that record. In particular, she says that RBC has failed to "put its best foot forward" (citing *Lu v. Li*, 2023 BCSC 271 and *Spring Hill Farms Limited Partnership v. Nose*, 2014 BCCA 66) and that adverse inferences ought to be drawn against it for its failure to fill the evidentiary gaps identified by Matthews J. In answer to her own evidence, which is largely uncontroverted, RBC has, she says, put forward only groundless speculation.

[29] I agree with Dr. Kinnaird that many of the evidentiary gaps identified by Matthews J. remain unfilled and that RBC has, in many cases, provided paltry if any explanation for its failure to fill them. However, I disagree with her submission that, even allowing for the adverse inferences that could be drawn against RBC on those grounds, the requisite factual determinations can be made on the record before me.

[30] With respect to the first question posed (concerning the enforceability of the severance term in Dr. Kinnaird's employment contract), RBC contends that it is

unenforceable on the basis that Dr. Kinnaird had a “disclosable interest” in the contract and therefore should have abstained from the vote to approve it. RBC relies in that regard on ss. 147 and 149 of the *BCBCA*, which state as follows:

147 (1) For the purposes of this Division, a director or senior officer of a company holds a disclosable interest in a contract or transaction if

- (a) the contract or transaction is material to the company,
- (b) the company has entered, or proposes to enter, into the contract or transaction,
- (c) either of the following applies to the director or senior officer:
 - (i) the director or senior officer has a material interest in the contract or transaction;
 - (ii) the director or senior officer is a director or senior officer of, or has a material interest in, a person who has a material interest in the contract or transaction, and
- (d) the interest is known by the director or senior officer or reasonably ought to have been known.

...

(4) For the purposes of subsection (1) and this Division, a director or senior officer of a company does not hold a disclosable interest in a contract or transaction merely because

...

- (c) the contract or transaction relates to the remuneration of the director or senior officer in that person's capacity as director, officer, employee or agent of the company or of an affiliate of the company,

...

149 ...

(2) Subject to subsection (3), a director who has a disclosable interest in a contract or transaction is not entitled to vote on any directors' resolution referred to in subsection (1) to approve that contract or transaction.

...

[31] A similar prohibition is reiterated in RBC's articles, which state as follows at s. 17.2:

A director who holds a disclosable interest in a contract or transaction into which the Company has entered or proposes to enter is not entitled to vote on any directors' resolution to approve that contract or transaction, unless all the directors have a disclosable interest.

[32] Even if there was a breach of those provisions, it does not necessarily follow that the contract is unenforceable. Section 151 of the *BCBCA* states as follows:

151 A contract or transaction with a company is not invalid merely because

- (a) a director or senior officer of the company has an interest, direct or indirect, in the contract or transaction,
- (b) a director or senior officer of the company has not disclosed an interest the director or senior officer has in the contract or transaction, or
- (c) the directors or shareholders of the company have not approved the contract or transaction in which a director or senior officer of the company has an interest.

[33] RBC argues that Dr. Kinnaird had a disclosable interest in the contract not only because it related to her remuneration, but because the severance term was inordinately generous to her. With respect to the qualification in s. 147(4)(c), RBC relies on *Jaguar Financial Corporation v. Alternative Earth Resources Inc.*, 2016 BCCA 193, in which Savage JA, writing for the Court, explained that a senior corporate officer's remuneration may be so extraordinary as to amount to a disclosable interest, for the following reasons:

[83] Further, I agree with *Jaguar* that the qualifier "merely" [in s. 147(4)] also implies that given remuneration may still amount to a disclosable interest depending on the magnitude of the remuneration. For example, a contract resulting in an excessive director's fee or excessive remuneration as a senior officer is not a disclosable interest merely because it relates to a director's or senior officer's remuneration, but it still may be a disclosable interest because the director's fee or senior officer's remuneration is so excessive as to be out of the ordinary. That is not the case here. There is no evidence that director's fees or employment benefits would be excessive in any way.

[34] In RBC's submission, in this case, unlike in *Jaguar*, there is evidence that the severance terms in issue were "so excessive as to be out of ordinary", inasmuch as:

- a) Dr. Kinnaird was promised twice as much severance as her predecessor received; and
- b) the jurisprudence suggests that a terminated employee can reasonably expect, in general, to receive one month of severance pay for every year

of service (citing *Peterson v. Wilson Logistics (Canada) Inc.*, 2003 BCSC 215) but Dr. Kinnaird had been with RBC for only 10 years at the time.

[35] Moreover, RBC alleges that the covenant is unenforceable not only because Dr. Kinnaird participated in the vote to approve her own employment contract, but also because she exercised undue influence over the other directors, some of whom reported to her. RBC has led no evidence directly supporting that allegation. However, there is evidence that the voting process was marred by a number of irregularities.

[36] Dr. Kinnaird has described that process in her own affidavits. She has also adduced an affidavit of Mr. Adams, which attaches some of the relevant correspondence. RBC relies in this regard on the text of Mr. Adams' email of December 22, 2015, reproduced above, in which Mr. Adams, on behalf of himself and Dr. Kinnaird, apologised for the "short notice" and "for falling outside the normal process". He acknowledged that the compensation committee had been given less than "complete information" about the resolutions, although he assures the directors that the terms of the proposed contract "fall within the approved parameters discussed by the Committee in November". RBC argues that a trial is needed to explore what information was withheld from the compensation committee. It speculates, with no evidentiary foundation, that it may have had something to do with the generosity of the severance package that was being offered to Dr. Kinnaird.

[37] In response, Dr. Kinnaird denies that she had a disclosable interest in the contract. She denies that the severance provisions were overly generous to her. She disagrees with RBC's premise that her predecessor's severance package served as a suitable comparator, given that he had been with RBC for much less time than she had by then, or that the general "guideline" amount of severance drawn from cases such as *Wilson Logistics* was appropriate in her case. She argues that RBC has no sound basis to question the fairness of the process or the result.

[38] In order to resolve this issue, the Court must determine, first, if the promise of 24 months' severance was, as RBC argues, "so excessive as to be out of the

ordinary”. If it was, then the contract will be unenforceable if, by virtue of that fact and the manner in which it was approved, it was not “fair and reasonable” to RBC (*Jaguar* at para. 70).

[39] As Lowry J. (then of this court) noted in *Wilson Logistics* (at para. 13), the amount of severance called for in any particular case is to be assessed with reference to the so-called *Bardal* factors (from *Bardal v. Globe & Mail Ltd.* (1960), 24 D.L.R. (2d) 140 (Ont. H.C.J.)), which include length of service, age, responsibilities associated with the position, and the availability of comparable employment. Other factors may be relevant as well.

[40] In this case, there is uncontroverted evidence in the record going to each of the enumerated *Bardal* factors, in varying degrees. However, the question of the appropriate severance amount that would have been payable but for the contract was not well developed in argument before me. I was referred to no authorities speaking to the amount of severance that would be payable in circumstances comparable to those present here. In the end, I am unable on the record before me to decide if Dr. Kinnaird had a disclosable interest in her contract of employment, and if so, whether it was nevertheless fair and reasonable to RBC in all the circumstances.

[41] If that were the only issue that needed to be resolved in order to arrive at a judgment in this case, it may have been possible to do so with the benefit of more focused submissions from the parties on the point. However, RBC’s second defence, based on just cause, is more heavily burdened by conflicting evidence, and therefore that much less amenable to summary adjudication.

[42] In advancing that defence, RBC relies not only on Dr. Kinnaird’s common law fiduciary duty, but also on the following term contained in her employment contract:

The Executive will not act in a manner where her private interest conflicts or could be perceived to conflict with her obligations to the Company. The Executive acknowledges and agrees that she is not a party to any agreement that could prevent or negatively impact or interfere with the proper and full performance of her duties under this Agreement. During the Term, the Executive agrees not to actively engage in another employment, occupation

or consulting activity for any direct or indirect remuneration without the prior approval of the Board.

[43] I disagree with Dr. Kinnaird's submission that there are no contested facts bearing on the question of just cause. On the contrary, the parties have adduced conflicting evidence on, for example, the following questions that are central to the analysis:

- a) the reason(s) for RBC's poor financial performance in the last few years of Dr. Kinnaird's tenure (Dr. Kinnaird attributes this to Russia's invasion of Ukraine and poor sales in China, whereas Mr. Tsonis says that the board held Dr. Kinnaird responsible for it);
- b) the extent (if any) to which Dr. Kinnaird neglected her duties as CEO in favour of her outside professional commitments or for other reasons (Dr. Kinnaird maintains that there was no neglect, whereas Mr. Tsonis avers that he "personally observed incidents that demonstrated the Plaintiff's failure to devote proper attention to her duties and responsibilities to [RBC]");
- c) the extent (if any) to which Dr. Kinnaird obtained board approval for those commitments (Dr. Kinnaird asserts that at least some members of the board knew of at least some of them, whereas Mr. Tsonis has deposed that he was unable to find any written record indicating board approval of any of them);
- d) the extent (if any) to which those commitments may have benefitted RBC (Dr. Kinnaird asserts that at least some of them inured to the benefit of RBC, but Mr. Tsonis disagrees); and
- e) whether one or more of them placed Dr. Kinnaird in a conflict of interest (one of the central issues in that regard being whether HyLiDx was a competitor of RBC – Dr. Kinnaird denies this, whereas Mr. Tsonis lists a

number of areas of overlap between the two businesses, noting, among other things, that HyLiDx is a competitor of RBC “in grants”).

[44] Dr. Kinnaird argues that Mr. Tsonis’s evidence, to the extent it conflicts with hers, is inadmissible inasmuch as he offers only hearsay and bald statements.

I agree that his evidence is highly problematic at times, such as where he expresses the opinion that Dr. Kinnaird could not, in his view, have fulfilled her duties as CEO with all of the external commitments he had documented in his affidavit. On the other hand, although his averment that he personally observed her neglecting her duties is bereft of any detail and therefore of limited probative value, I am not prepared to find it completely inadmissible, so as to leave Dr. Kinnaird’s own evidence on the point uncontroverted.

[45] Despite the observation of Matthews J. about the need for cross-examination before the requisite factual determinations could be made, neither party sought to cross-examine any of the opposing party’s affiants. There have been no examinations for discovery conducted to date. While Dr. Kinnaird says that she made herself available for an examination prior to the hearing before me, RBC responds that it will not be in a position to conduct one until Dr. Kinnaird produces the additional documents it has been seeking from her.

[46] In view of my conclusion that the requisite factual determinations cannot be made summarily on the record before me, a trial will be necessary to resolve the dispute. A trial date is already scheduled. RBC has an incentive to proceed to trial expeditiously, given that Dr. Kinnaird has already garnished sufficient funds to cover the liquidated portion of her damages claim. I am not persuaded, in all the circumstances, that it would be disproportionate or otherwise unfair for the dispute to be resolved in that manner.

[47] For those reasons, I am dismissing the application.

IV. SUMMARY AND CONCLUSION

[48] The application is dismissed. The matter is to proceed to trial.

[49] The costs of the application will be payable in the cause.

“Milman J.”