

Court of King's Bench of Alberta

Citation: Wan v H & R Block Canada Inc., 2026 ABKB 367

Date: 20260511
Docket: 1901 09734
Registry: Calgary

Between:

Timothy Wan

Plaintiff / Respondent

- and -

H & R Block Canada Inc.

Defendant / Applicant

**Reasons for Judgment
of the
Honourable Justice N.E. Devlin**

Overview

[1] Timothy Wan (“Mr. Wan”) worked for H&R Block Canada, Inc. (“H&R Block”) briefly in 2016-2017. He was terminated with cause and ultimately filed a wrongful dismissal claim. H&R Block sought summary judgment dismissing his lawsuit. Applications Judge Farrington declined the application, holding that the extent of H&R Block’s grounds determinable in a summary judgment process were insufficient to conclude that Mr. Wan was fireable for cause.

[2] H&R Block appeals that decision, insisting that the combined impact of four heads of conduct by Mr. Wan can and should form a basis for a summary determination that cause to

terminate him existed. For the reasons that follow, I agree with the learned Applications Judge, and the appeal is dismissed.

Background and Employment Relationship

[3] The employment relationship at issue in this case was short, unpropitious, and unfolded almost a decade ago. This lawsuit grinds on, pointlessly save for the obvious emotional drivers underlying it.

[4] Mr. Wan commenced employment with H&R Block in August 2016 as Vice President of Product Development and Innovation. His responsibilities included developing and implementing new products, managing budgets and strategic planning, and working with third-party partners in connection with business initiatives.

[5] While H&R Block characterizes Mr. Wan as a senior executive, this was in name only. The evidentiary record indicates that his functional role was that of a key production employee, not a manager or executive. Mr. Wan had a single direct report, and his position appears to have been relatively circumscribed when compared to the broader executive structure, and free of managerial duties. His compensation was also not indicative of a true senior executive position. These facts are relevant to gauging the impact and severity of the conduct alleged against him.

[6] He was, nevertheless, a key employee in H&R Block Canada's Calgary head offices, and subject to confidentiality obligations and a Code of Conduct requiring honesty, integrity, and protection of confidential information.

Events Leading to Termination

[7] H&R Block relies on four events to justify summary dismissal of Mr. Wan's claim. Two occurred and were known during Mr. Wan's tenure and provided the ostensible cause for his termination, one was discovered later, and the last took place post-dismissal.

The Share Grant Discussion

[8] In late June 2017, Mr. Wan attended a compensation review with Peter Bruno, who had recently assumed the role of President. At that meeting, Mr. Wan raised a \$25,000 share grant that had been offered as part of his compensation and incentive package at hiring. Mr. Bruno deposes that he asked Mr. Wan whether he had "received anything" from Fidelity, the third-party administrator of the share plan, and that Mr. Wan responded that he had not.

[9] Following the meeting, Mr. Bruno was provided with documentation indicating that Mr. Wan had received multiple communications regarding acceptance of the share grant but had failed to do what was required to receive his shares within the applicable time period.

[10] On that basis, Mr. Bruno formed the view that Mr. Wan had not been truthful in his explanation and that this gave rise to concerns regarding his honesty and integrity. However, he never clarified what Mr. Wan had meant in the conversation, much less what the problem was.

[11] Mr. Wan's evidence on this issue is materially different. He maintains that he understood the question about "receiving" to refer to receipt of the shares themselves, rather than communications from Fidelity, and that he accurately reported that he had not received the shares. Mr. Wan further states that he experienced technical difficulties accessing the Fidelity platform and that he communicated that issue to Mr. Bruno, though this evidence was not fully addressed in the employer's account.

[12] There is no dispute on the record that Mr. Wan did not ultimately receive the share grant.

The IBM / Conference Incident

[13] H&R Block US had a nascent but much-publicized partnership with IBM's Watson AI platform. In May of 2017, the Canadian team, including Mr. Wan, had been told that this relationship was not proving out and that it should not be pursued further as the US corporation was considering ending it. This state of affairs was emphasized to be confidential.

[14] Subsequently, in early July, Mr. Wan attended a conference in San Francisco in connection with his role at H&R Block, and interacted with a representative of IBM, identified as Kevin Eagan. Shortly after this meeting, executives at H&R Block's parent corporation in the US raised an alarm about a call they had received from IBM. In it, a senior IBM executive had contacted H&R Block US to discuss the fact that they had heard that H&R Block was dissatisfied with the Watson partnership. It was indicated that this information originated from a Canadian H&R Block source, and Mr. Wan's name popped up in the relevant email thread amongst senior American and Canadian leadership, though how or why it did is unexplained.

[15] Nevertheless, the discussion led the US President of H&R Block to email his colleagues as follows:

Shut this moron Tim Wan down. He doesn't know a damn thing. Let him know I am royally pissed and I want a written explanation from him to me. Stupid.

[16] This led a Mr. Knight (a Senior US VP against whom Mr. Wan levies serious allegations of impropriety towards female employees of H&R Block) to reply:

Tim is being fired in the am – we were planning on doing it anyway for other reasons, but this just puts the final nail in his coffin.

[17] Mr. Wan's version of what happened in San Francisco is very different. He deposes that the IBM employee had queried him about the Watson relationship, and that he had provided a vague but positive answer, essentially saying Canada didn't know much about it but Watson sounded promising.

[18] On July 14, 2017, without any conversation with Mr. Wan about what he had said or done in San Francisco, he was terminated for cause. Mr. Bruno told him this was based on dishonesty relating to the share grant and disclosure of confidential information concerning the IBM relationship.

Surreptitious recordings

[19] During the litigation process, H&R Block discovered that Mr. Wan had made nine surreptitious recordings of workplace conversations without the knowledge of other participants. These recordings included discussions of confidential strategy and personnel matters.

[20] Mr. Wan acknowledges making the recordings, but asserts that he did so in response to a dysfunctional and “toxic” workplace environment and for the purpose of documenting interactions and protecting himself. More importantly, he deposes, and it has not been gainsaid, that the former President of H&R Block Canada told him to record some of these conversations.

[21] H&R Block strenuously argues that Mr. Wan himself has admitted in cross-examination that his purported reasons for the recordings are inaccurate, and that the nature and context of the meetings he recorded make his firing for this workplace transgression unquestionably warranted and determinable on summary judgment. This is H&R Block’s strongest argument but, for reasons detailed below, I find that the brightline rule on workplace recordings they are advocating is inappropriate. Rather, a contextual analysis informed by highly contested questions of fact, is needed to situate the wrongfulness and severity of the surreptitious recordings.

Copying of emails

[22] Following his termination, Mr. Wan copied his entire Outlook email inbox to a personal hard drive and took it home. Years later, he produced these materials in his Affidavit of Records. This resulted in a successful injunction application compelling him to return these materials, which had been taken in contravention of workplace policies that bound Mr. Wan.

[23] Notably, Mr Wan never used, or threatened to use, any of this information in any manner.

[24] The law, as discussed below, is clear that post-termination conduct cannot form grounds for dismissal, though it can be used to understand and contextualize conduct in the course of employment. To that end, H&R Block argues that this act of interference with confidential material echoes Mr. Wan’s revelation of confidential information to IBM, and his disrespect for fundamental workplace obligations and values, as manifest in his secret recording of conversations during the course of his employment.

Proceedings Below

[25] H&R Block brought an application for summary dismissal, asserting that there was no genuine issue requiring trial and that the evidentiary record established just cause or after-acquired cause for termination on the grounds discussed above.

[26] Applications Judge Farrington dismissed the application, concluding that the matter was not suitable for summary adjudication and required a trial. Focusing in particular on the issues of the recordings, he noted that the authorities relied upon by both sides were trial decisions, highlighting the contextual nature of whether surreptitious recordings constitute cause for termination.

Positions on Appeal

[27] H&R Block submits that the Applications Judge erred in failing to properly apply the summary judgment test and in finding that there was a genuine issue requiring trial.

[28] It argues that the evidentiary record establishes, on a balance of probabilities, that Mr. Wan engaged in conduct incompatible with continued employment, including dishonesty, breach of confidentiality, and surreptitious recording of confidential discussions. It relies most heavily on the recordings, the making and existence of which are not disputed, as a conclusive basis for firing Mr Wan and summarily rejecting his wrongful dismissal claim.

Respondent (Mr. Wan)

[29] Mr. Wan submits that the application is unsuitable for summary determination because the record reveals multiple material factual disputes requiring credibility findings. He disputes each category of alleged misconduct and maintains that the employer acted precipitously without proper investigation, particularly in relation to the IBM incident. He further submits that the after-acquired allegations rely on conduct either justified in context or legally incapable of constituting cause, particularly where such conduct occurred after termination.

Analysis

[30] This appeal arises from a summary dismissal application under Rule 7.3. The governing framework is well established. The applicant bears the burden of establishing its claim on a balance of probabilities. The Court must have sufficient confidence in the evidentiary record to resolve the dispute fairly and justly, without a trial.

[31] Summary judgment is not a shortcut to avoid contested fact-finding. Where material facts are disputed, or credibility is engaged, the procedure will generally be unsuitable: *Weir-Jones Technical Services Inc v Purolator Courier Ltd*, 2019 ABCA 49. This principle has particular force in employment litigation. Allegations of just cause are inherently contextual, fact-driven, and often turn on nuance and credibility.

[32] That said, the Court should not shy away from doing the hard work of determining whether there really are trial questions. With that in mind, I undertake a specific review of each ground alleged to determinatively constitute cause for Mr. Wan's dismissal.

The Share Grant Issue

[33] H&R Block's reaction to this incident is odd and out of step with the evidence. Mr. Bruno never initiated a simple, intelligent conversation with his colleague on this subject, but rather somehow jumped to a conclusion that Mr Wan was untrustworthy. This is bizarre, and suggestive of a deeper, pre-existing antipathy towards Mr Wan, and an agenda to find reasons to terminate him.

[34] The fact that a supposedly valued new colleague has failed to receive an incentive share allotment is a genuine cause for concern on several fronts. Integrity is not one of them. Rather, Mr. Bruno would have had justified concerns over internal systems failures and, possibly *after* having fully canvassed the subject with Mr. Wan, concerns over his employee's work level (was he too

overworked to claim his entitlement?) or perhaps competence (how could he fail to look out for himself in this way).

[35] The matter might have been clarified by a simple conversation about what Mr. Wan meant when he told Mr. Bruno that he had “not received anything” from Fidelity. It is entirely plausible that, as he deposes, he meant he had not received the shares, despite having tried. If this version of events is accepted, there was no dishonesty.

[36] Indeed, the leap to a conclusion about integrity and trustworthiness rings false on its face. Without a detailed discernment of what had gone awry with the share incentives, this incident could not contribute to genuine cause for dismissal whatsoever. Rather, it stands as circumstantial evidence offering an inference that Mr. Bruno already did not like, trust, or respect Mr. Wan, was inclined to conclusions that aligned with this posture, and was keen for reasons to be rid of him. This inference is bolstered by Mr. Bruno’s affidavit, in which he deposes to having discussed a desire to terminate Mr. Wan with his US-based superiors.

[37] On summary judgment, I need not, and do not, draw that inference. Its availability, however, is an indicator that this matter has significant factual disputes requiring trial.

[38] While it is odd that an employee would not take the necessary steps to claim a benefit entitlement, it is equally odd to frame his responses in this case as dishonesty. If anything, it might have raised concerns over competency, communication, and capacity. As it is, something rings untrue about the case put forward by H&R Block on this point.

[39] A proper manager would have been confused and concerned as to why a key employee had been frustrated in obtaining part of his incentive package. He would have asked questions, clarified the situation, solved the problem, and imposed progressive discipline if any misconduct came to light once the facts were known.

[40] None of that happened. I would be prepared to conclude on the record before me that the incentive incident did not constitute cause for termination. Especially as handled by the employer, the record does not even support it contributing to cumulative cause.

[41] Indeed, only if the evidence at trial came out very much in H&R Block’s favour could the incentive incident constitute after-acquired cause.

The IBM Incident

[42] The second ground offered is that Mr. Wan disclosed confidential information about the IBM Watson relationship. This ground *could* be serious. If handled professionally, it might have constituted some basis for discipline, potentially – but far from self-evidently – extending to dismissal. However, the facts of what Mr Wan did or said are disputed on the record, and are far from the sort of dispute that can be readily decided on summary judgment.

[43] Two points stand out. First, it is inferentially likely that IBM identified Mr. Wan as the source of the negative information. However, this is nowhere stated in the Record, much less is there any evidence of it. The state of the evidence is that H&R Block suspected, *but did not know*, that Mr. Wan had made the problematic remarks.

[44] Quite reasonably, the US President requested that a written explanation be obtained from Mr. Wan. This was prudent and in keeping with proper human resources practices. By contrast, Mr. Knight's response was not. It highlighted the second salient point, that disposing of Mr. Wan was already on the agenda and an unproven, uninvestigated concern about him was seized upon to justify his termination.

[45] Self-evidently, if Mr. Wan's version is accepted, the IBM incident neither provides, nor contributes to, grounds for his dismissal. H&R Block argues that what Mr. Wan said doesn't matter, because he should not have said anything at all and that even his account of the impugned conversation was a sanctionable breach of confidence. Notwithstanding Mr. Fairhurst's able advocacy, I cannot agree.

[46] Employment law takes a pragmatic view of how people do and ought to behave in the real world. Professional colleagues talk at conferences. That is what such events are for. A complete refusal by Mr. Wan to engage on the question would have been more suspect and indicative of a negative state of affairs than the banal response he claims to have given.

[47] Moreover, H&R Block's case rests primarily on an internal email chain reporting that "some of our folks in Canada" made negative comments, later attributed to Mr. Wan. That attribution is inferential. Mr. Bruno acknowledges that his conclusion rested largely on the fact that Mr. Wan attended the conference and had the opportunity to speak to the parties involved.

[48] However, the record establishes that no investigation was conducted. Mr. Wan was not asked for his explanation. The IBM representative was not contacted. In short, H&R Block did not even really know what happened at the time. Its record on summary judgment is no better.

[49] If Mr. Wan is believed, he acted correctly and in accordance with his obligations to his employer. This is a pure credibility issue requiring trial.

[50] That said, if H&R Block could substantiate that Mr. Wan did convey internal information about H&R Block's dissatisfaction with its IBM Partnership, this would be quite serious. The problem is the lack of any proper human resources process to address the concern.

Surreptitious Recordings

[51] The central issue on this appeal concerns Mr. Wan's surreptitious recordings. The fact of recording is not disputed. The legal significance is. That legal significance, however, derives from the detailed factual context.

[52] H&R Block argues that recording workplace conversations without consent, including those where confidential and privileged business matters were discussed, is inherently incompatible with continued employment, particularly for a senior executive. In particular, it argues that Mr. Wan's pretense for making the recordings is belied by the choice of conversations he recorded, some of which were obviously unconnected to his expressed concern about a toxic work environment.

[53] The law is not on H&R Block's side on this issue. The jurisprudence surrounding surreptitious recordings as cause rejects any categorical rule. Whether making such recordings constitutes cause in a particular case is a contextual inquiry. In this vein, the parties contrast

Rooney v GSL Chevrolet Cadillac Ltd, 2022 ABKB 813, where Justice Feasby of this court found that such recordings had been properly made in the context of the workplace environment, with *Shalagin v Mercer Celgar Limited Partnership*, 2022 BCSC 112, aff'd 2023 BCCA 373, where the making of such recordings was found to be cause for termination.

[54] Of note, both of those cases involved full trials of the relevant issues. The analysis is fact-driven, sensitive to workplace dynamics, employee purpose, and the surrounding circumstances. As Justice Feasby held in *Rooney*, such recordings may, in some circumstances, be justified and will not constitute cause where the relationship is already strained and the conduct arises in response to that strain.

[55] Conversely, *Shalagin* illustrates a different end of the spectrum. There, recordings were persistently made for over ten years, with little or no rational connection to the reasons the plaintiff articulated for this otherwise objectionable practice, which was in breach of clear workplace policies. The finding of cause is easily understandable in that situation.

[56] In short, these authorities do not establish a rule. They define a spectrum. That spectrum is, in turn, defined by subtle nuances in the relationships and circumstances in play, including;

- problems in the workplace;
- power imbalances in the workplace;
- reasonable concerns about unethical conduct both by and against the employee;
- the employee's stature and position within the company;
- policies within the company;
- the nature of the conversations recorded;
- the participants in those conversations; and
- what is done with the recordings.

[57] This list of factors is not exhaustive but demonstrates the purely evidentiary questions which would be relevant to deciding whether making of the surreptitious recordings amounted to cause in this particular case. This is quintessentially a trial issue.

[58] The question is whether the record permits a principled placement of this case on that spectrum. In my view, it does not. Too many relevant factors remain contested or unexplored. The following considerations are particularly material.

i. State of the Employment Relationship

[59] The condition of the relationship at the time of the recordings is central. Mr. Wan's evidence is that the workplace was dysfunctional, that he faced hostility from senior personnel, and that he perceived threats to his continued employment. He even states that Mr. Bruno's predecessor as President told him it would be prudent to record certain conversations.

[60] Mr. Wan describes the recordings as a response to that environment — a means of documenting interactions and protecting himself. If accepted, this evidence aligns the case more

closely with *Rooney* than *Shalagin*, and could well be found to justify, or at least partially excuse, the impugned conduct.

[61] H&R Block disputes this characterization, but did not materially challenge it during cross-examination. The record shows that there was a high turnover in key positions at the time, and Mr. Bruno's demonstrated pre-existing antipathy towards Mr. Wan, combined with Mr. Knight's cavalier approach to the IBM incident all inferentially bolster Mr. Wan's case that H&R Block was not a safe or happy workplace for him.

ii. Purpose and Motivation

[62] The reasons the recordings were made are important. Recordings made for opportunistic or bad faith purposes may undermine trust irrevocably. Recordings made for perceived self-protection may not. H&R Block says that, similar to Mr. Shalagin, Mr. Wan recorded conversations lacking any rational connection with his stated reasons.

[63] It is true that Mr. Wan's answers became somewhat ambiguous about the purpose of a handful of the recordings. This weakens his case on justification for the recordings. However, this does not necessarily and immutably render Mr. Wan's recordings wrongful, nor wrongful to a degree that justified immediate termination. Moreover, the adverse credibility finding needed to completely reject his version of events, and the reasons he offers for making the recordings, cannot be derived from this record.

[64] In the end, the reason for the recordings, and whether they were in any way justifiable, is only one factor in the overall analysis. There might be situations in which even a single secret recording would justify termination, and where that state of affairs could be demonstrated on summary judgment. That would, however, require a confluence of factors, all pointing to an irremediable breach of trust, demonstrable on undisputed facts. That is simply not present here.

[65] Finally, H&R Block's criticism of Mr. Wan's statement that their former president told him to record certain conversations to protect himself is misplaced. This is not hearsay. It is the fact that the statements were made that matters. Their 'truth' is not an operative concept in this context. Moreover, the absence of evidence from the alleged declarant – a former President of the appellant corporation – reflects badly on it, not Mr. Wan. Acceptance by the trier of fact that Mr. Wan made the recordings in part because his former boss told him it was a good idea could go a long way towards persuading the trier that some overreach of his proper justification was not fatal to Mr. Wan's position.

iii. Position and Status of the Employee

[66] H&R Block emphasizes that Mr. Wan was a senior executive. That description is formally accurate, but only superficially true. The record indicates that Mr. Wan had a limited team, a circumscribed operational role, and relatively modest authority within the organization. He had one direct report and made just over \$200k annually. He was an important employee, but not self-evidently one whose level of trust and responsibility would have made the creation of these recordings an absolute game-ender.

iv. Existence of Workplace Policies

[67] The presence of a clear policy is a significant factor in the jurisprudence. While I hesitate to place too much emphasis on the need for formalistic policies requiring that employees act like decent human beings and uphold general norms (including not secretly recording one another), the existence of an anti-recording policy is relevant. Unlike in *Shalagin*, there was none here. H&R Block relies on general confidentiality obligations to render the recordings wrongful, but does not point to a specific prohibition. The absence of an express policy weighs against summary determination of misconduct severe enough to justify termination.

v. Nature of the Recorded Information

[68] The recordings captured confidential business discussions, including strategy and personnel matters. This is a serious factor in the appellant's favour and can be ascertained on this proceeding. It is not, however, determinative. The significance of recording confidential discussions depends on context, purpose, and use. It is possible that the making of some of these recordings would have justified serious discipline, maybe even dismissal. But that question cannot be answered on their contents alone.

vi. Use Made of the Recordings

[69] The record does not establish that Mr. Wan used the recordings for any improper purpose, or for external disclosure. Indeed, there is an available inference that his motives were legitimate if misguided. The recordings were disclosed in the course of litigation, consistent with disclosure obligations and not used otherwise.

vii. The Broader Context

[70] The recordings must also be understood in the context of the employer's conduct. The record reflects that Mr. Wan was terminated rapidly, without full investigation, and in circumstances where the employer had already formed a (flawed) view regarding his integrity. His affidavit describes a culture of abusive and harassing behaviour by senior executives above him, both directed towards him and that he witnessed.

[71] Respectfully, a final determination on whether this factual matrix would have made the recordings a firing offence cannot be made on summary judgment on this record. That conclusion should in no way be taken as condoning the practice. It is simply the case that a trial is required in this instance.

Post-Termination Conduct

[72] Finally, while accepting that post-termination conduct cannot constitute cause for dismissal, H&R Block also raises Mr. Wan's post-termination conduct in copying his email inbox as an overarching act of wrongdoing that colours the whole matter.

[73] The governing legal principle on that point is clear. Post-termination behaviour is only relevant to understanding pre-termination conduct or to issues of damages. This is confirmed in *Letendre v Deines Micro-Film Services Ltd*, 2001 ABQB 26 at para 16; *Gillespie v 1200333 Alberta Ltd*, 2012 ABQB 105 at paras 20, 22, and 29; and more recently *Haack v Secure Energy (Drilling Services) Ltd*, 2021 ABQB 82 at para 415; *McDonald v Sproule Management GP Limited*, 2023 ABKB 587 at para 66.

[74] In this case, the taking of the computer files, while wrongful, is fully post-termination conduct. It also aligns with Mr Wan’s position that he recorded conversations to protect himself from an abusive and unethical workplace environment. Whether that is true or not cannot be decided through summary judgment.

Conclusion

[75] Each category of alleged misconduct raises material factual disputes. The surreptitious recordings, which are the only viable grounds for dismissal on the record, require a nuanced contextual analysis engaging multiple interrelated factors on which the parties materially disagree. Those disagreements are not the sort that can be resolved on a summary record, as they engage credibility and disputed issues of fact.

[76] The applications judge correctly concluded that a trial is required. I reach the same conclusion. The appeal is dismissed with costs to Mr. Wan.

Postscript

[77] Mr. Wan worked briefly at H&R Block, almost a decade ago. The parties need to make their peace and move on. The absence of economic sense and proportionality to this dispute strongly suggest that emotions and personal feelings have taken the driver’s seat. The Court strongly urges the parties to consider mediating this matter if they have not already done so.

Heard on the 7th day of May, 2026.

Dated at the City of Calgary, Alberta this 11th day of May, 2026.

N.E. Devlin
J.C.K.B.A.

Appearances:

Sean Fairhurst & Christy Lee
for the Applicant

Luke Rasmussen
for the Respondent