

# OLG chief: I'm the scapegoat

**Kelly McDougald says she was axed amid scandal after refusing government order to fire underlings**

September 16, 2009

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The Liberal government knew months ago that an expense scandal was brewing at the Ontario Lottery and Gaming Corp., but kept a lid on it while searching for a political scapegoat before settling on lotto boss Kelly McDougald, her \$8.85 million lawsuit against the province claims.

McDougald alleges she was fired from her \$400,000-a-year CEO job with no severance after refusing to sack the corporation's chief financial officer and one other senior employee, as demanded by Finance Minister Dwight Duncan to make it appear the "boils are lanced" when embarrassing expense account details became public.

Allegations in the 18-page notice of claim have not been proved in court and Duncan, who had no comment yesterday, has previously said the government would "vigorously" defend itself after terminating McDougald on Aug. 31.

McDougald left with nothing, even though she offered to resign if she was paid a year's severance as per her contract, her notice of claim says.

Six weeks earlier, on July 22, the finance minister confided to her that he had been briefed on "the expense issue," the suit alleges.

Duncan was up to speed because he knew the Progressive Conservatives, emboldened by an expense-account debacle at eHealth Ontario, were seeking potentially embarrassing details about OLG expenses through freedom-of-information legislation.

"The minister indicated that once these 'boils are lanced' then we can work together to define the strategy and plans for the future of gaming in the province," McDougald alleges in her wrongful dismissal suit.

Duncan said something had to be done quickly because the information sought by the Tories since January had, according to the claim, "been held back for as long as possible."

Legal precedent suggests McDougald has a good chance of winning her case, said Janice Rubin, an employment lawyer with Rubin Thomlinson.

"In this case, the employer alleges inappropriate expenses is cause to terminate this person's employment. What we know from case law is that is a very ... high legal bar for them to reach. In the vast majority of cases, employers don't proceed down that path because it's a very, very difficult path," said Rubin, adding such cases are usually settled before going to court in favour of the person launching the suit.

McDougald pointed out last week that some of the expenses were incurred before her tenure began at OLG two years ago.

Noting the "onus is on the employer to prove its case," Rubin said if it ever gets to trial, history suggests the fired employee wins "75 per cent" of the time.

"Where the government's case is potentially vulnerable is because this termination was so public. ... If I were plaintiff's counsel, what I would try to do is portray it as a political act," she said.

That is an impression already held by the opposition.

"Dwight Duncan was headhunting," said Tory MPP Lisa MacLeod (Nepean-Carleton).

"You wonder if they had a plan at all other than to make someone else hang than a Liberal minister."

The lottery expense scandal – which includes lavish meals expensed with booze and one employee's \$30 car wash without an official receipt – is another headache for a Liberal administration already damaged by a spending scandal at eHealth Ontario that saw consultants paid up to \$3,000 a day expensing snacks to taxpayers.

"Your scandals are starting to have sequels," Progressive Conservative Leader Tim Hudak told Premier Dalton McGuinty yesterday in the Legislature.

Ousted eHealth chief executive Sarah Kramer received \$317,000 in severance, but the government sought to avoid similar headlines in the McDougald case.

"If they'd done this right they could have done it for one year's salary," said her lawyer, Brian Grosman, charging his client was fired in a "really

horrific way" with both the premier and finance minister impugning her skills publicly.

"Her reputation may be irreparably harmed. ... Is she ever going to get a high-level public service job after that happens?"

McDougald is not speaking publicly at this point. "She's very upset," said Grosman. McDougald disputes there was cause to fire her, saying a lawyer she consulted on behalf of OLG determined there were not grounds to fire any of her senior executive team.

She says she informed Duncan and top officials from the premier's office of that when she was summoned to a meeting at 7 p.m. on Aug. 27. She was assured she was not being asked for her resignation, according to the claim.

However, the suit alleges that Duncan told her "the expense reports are unacceptable and ... the government does not want to deal with this type of negative publicity." According to the suit, the minister ordered her to take "significant action" by firing OLG's chief financial officer and "to terminate one other individual with cause, the identity of whom was to be determined by Ms. McDougald."