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I. Overview

[1] The plaintiff asserts that she was wrongfully terminated and seeks damages. The plaintiff is a former employee of the defendant bank. She was dismissed for cause in July 2013. She had been with the bank for a little over eight and a half years. She was a Senior Financial Services Representative when she was dismissed. She previously held the role of Senior Financial Advisor.

At the time of her termination, the plaintiff was 58 years old earning an annual salary of \$55,000 and was eligible for discretionary bonuses. She was 68 years old at the time of the trial.

[2] The defendant bank pleads just cause for the plaintiff's dismissal without notice and asks that the action be dismissed. The defendant contends that there was cause for termination because of the plaintiff's repeated breaches of the bank's Code of Conduct, policies, and procedures. The defendant asserts that the plaintiff received two warnings in writing about violating the bank's policies and, following a final warning, she was dismissed for cause. The defendant says the breaches were serious and led to an irreparable breakdown of the employment relationship.

II. The Parties

[3] The plaintiff, Naseem Pirani ("Ms. Pirani"), commenced employment with the defendant as a Senior Financial Advisor on December 13, 2004.

[4] The defendant, Canadian Imperial Bank of Commerce ("CIBC") is a chartered bank of Canada which carries on business in the banking and financial services industry. CIBC provides a full range of financial products and services.

III. Nature of the claim

[5] Ms. Pirani seeks a declaration that her employment was wrongfully terminated on July 25, 2013. The claim further seeks special damages for overtime, damages for reasonable notice equivalent to 48 months, severance pay in accordance with the *Employment Standards Act, 2000*, S.O. 2000, c. 4, as well as damages for mental distress and moral damages in the amount of \$300,000.00. Ms. Pirani also seeks a declaration requiring the defendant to correct the Notice of Termination filed on the National Research database of the Investment Industry Regulatory Organization of Canada (IROC), and aggravated, and exemplary and/or punitive damages in the amount of \$200,000.00.

IV. Procedural Issues

[6] At the commencement of trial, the parties filed, as an Exhibit, a Joint Document Brief which included the parties' agreement with respect to each document.

[7] At the commencement of the trial, the plaintiff sought to bring a motion for undertakings dating back to 2016 and a second motion related to CIBC's late delivery of a Response to the plaintiff's Request to Admit. I declined to hear either motion as counsel for the plaintiff did not advise the Pre-Trial-Judge, Justice Akbarali, of the pending motions and, in the result, no time was allocated for the motions.

[8] Ms. Pirani testified but called no other witnesses.

[9] CIBC called two of Ms. Pirani's former managers, Raymond Lou and Marina Wahabi.

[10] In addition to the witnesses, the parties filed an Agreed Statement of Facts, a Joint Book of Documents, and a Supplementary Joint Book of Documents. The parties agreed that some of the documents in the Joint Book, as specified, were admitted for the truth of their contents.

V. Background

[11] On December 13, 2004, at the age of 49, Ms. Pirani entered an employment relationship with CIBC. She started work in January 2005 in the position of Senior Financial Advisor. CIBC dismissed her for cause on July 25, 2013. When she was hired, and during her employment with CIBC, Ms. Pirani signed offers of employment and employment agreements (most recently in March of 2012), which contained terms of employment.

[12] During her employment with CIBC, Ms. Pirani received two written warnings. The first warning letter was issued in November 2010, and the second in February 2013.

[13] Upon signing the Employment Agreement, Pirani agreed to a number of express terms of employment, including to follow all CIBC policies and procedures.

[14] During her employment, Pirani was able to review all CIBC policies through the company's intranet.

[15] During her time as a Senior Financial Advisor, Ms. Pirani transferred between branches on a few occasions. At the time of her termination, she worked at the Albion Mall branch as a Senior Financial Services Representative, managed by Marina Wahabi ("Ms. Wahabi").

[16] In her role as a Senior Financial Advisor, Ms. Pirani's job duties included the following:

- a) assisting clients with their short and long term financial needs, including by recommending a full range of solutions (banking, credit, investment and wealth protection) and taking into account the clients' current situation, risk profile, time horizon, and other personal factors; and
- b) accurately capturing and validating clients' personal and financial information, and ensuring all documentation is completed in accordance with CIBC policies and procedures.

[17] In January 2010, Ms. Pirani transferred to the Islington and Steeles branch for a position as Senior Financial Advisor, reporting to Hedy Afsharian, General Manager. She was to manage a \$90 million plus portfolio. The position came with a base salary of \$55,000, to be increased by \$2,500 to reflect the portfolio being managed. The base salary was to be reviewed semi-annually and reduced by \$2,500 if the portfolio fell below \$90 million.

[18] Ms. Pirani started at the Islington branch on February 1, 2010. Her son in law had recently been diagnosed with cancer and her daughter was pregnant. Her son in law passed away in April

2010. Ms. Afsharian was promoted and left the branch. A new manager, Raymond Lou, came on board in August 2010.

[19] On November 17, 2010, CIBC gave Ms. Pirani a written warning regarding her failure to review overdraft reports. The written warning followed a previous discussion. The letter indicated, among other things, the following notice to Ms. Pirani:

You are expected to immediately ensure that you strictly adhere to all procedures; not just limited to the review and action of the overdraft report.

Ongoing reviews will be conducted to ensure that you are followed correct procedures.

This letter is a formal warning to you with that failure to improve your performance to our satisfaction will result in further disciplinary action being taken. You should be aware that this will affect your PMM rating and eligibility for any incentive payments.

[20] Ms. Pirani went on sick leave on November 18, 2010.

[21] Ms. Pirani reported to Mr. Lou until she went on sick leave on November 18, 2010.

[22] From November 2010 to June 2011, Ms. Pirani was on a medical leave, and was on short-term disability followed by long-term disability. She returned to work full time on January 3, 2012.

[23] Ms. Pirani's most recent position at CIBC was Senior Financial Services Representative. She accepted this offer on March 17, 2012. As a Senior Financial Services Representative, Ms. Pirani was responsible for identifying clients' financial needs and referring clients to the CIBC services and employees best suited to meet those financial needs. Ms. Pirani maintained her base salary at the higher Financial Advisor level while employed as a Senior Financial Services Representative.

VI. Issues to be determined

[24] The following factual and legal issues are in dispute:

- i. Did CIBC have cause to terminate Ms. Pirani's employment?
- ii. If not, are damages limited to the termination provision in the employment agreement?
- iii. What is the proper quantum of damages?

VII. Position of the parties

i. Position of Ms. Pirani

[25] Ms. Pirani asserts that CIBC had no cause to terminate her. She submits that since CIBC terminated her with cause, CIBC can no longer rely on the termination provision in the employment agreement. Ms. Pirani contends that she had no complaints before 2012. She says that she was demoted from the position of Senior Financial Advisor, a level 7 position, to that of a Senior Financial Services Representative, a level 3 position, though she received the same pay. Ms. Pirani contends that the only issues with her conduct as an employee are the scheduling issues which occurred in July 2013, over eight years into her employment with CIBC.

[26] Ms. Pirani submits that she was under stress due to changing branches, learning a family member had cancer, a former employee attempting to poach clients, and not having a manager or an assistant for a period. Ms. Pirani indicates that she was approached by Ms. Afsharian to join her branch at the end of 2009. Shortly thereafter, she learned that her son-in-law had an aggressive brain tumour, and her daughter was newly pregnant. She claimed she was assured by Ms. Afsharian that she would be supported and, as a result, decided to transfer to Ms. Afsharian's branch. Her son-in-law passed away soon thereafter. Ms. Afsharian then left the branch, the branch was without a manager, and she was without an assistant for a few months. Ms. Pirani contends that it was a very busy and stressful time. She says that after the new manager, Mr. Raymond Lou, came on board, he harassed her and contributed to her stress caused by her son-in-law's death, the birth of her grandchild, and taking care of her grieving daughter. She went on sick leave in November 2010.

[27] Ms. Pirani says that the only issues with her employment were the scheduling issues in July 2013, which boiled down to a miscommunication and a misunderstanding. She points to the fact that there were no prior complaints over the eight years that she had been employed.

[28] With respect to the complaints about her performance relating to the failure to address overdrafts, failing to obtain client consent before pulling their credit bureau profiles, altering payout statements in a mortgage file, and failing to report to work in the summer of 2013, Ms. Pirani contends that she was being singled out and targeted. She contends that her assistant was the person responsible for bringing to her attention any issues with respect to overdrafts. She points to the fact that CIBC has not provided any documentation to show whether the client was a high-net-worth client and whether the bank was put at risk. As for the credit bureau issue, she says it was an accepted practice to conduct credit bureau searches with only oral consents. She claimed that all the Financial Services Advisors obtained verbal consents. As for the payout statements for mortgages that were changed, while Ms. Pirani acknowledges the allegations are very serious, she claims that no documents were provided to show which payout figures were changed and by how much the figures were changed.

[29] She submits that CIBC's reporting her to the Ontario Securities Commission ("OSC") has caused her to suffer immensely and made it very difficult for her to obtain similar employment.

ii. *Position of CIBC*

[30] CIBC asks that the action be dismissed with costs as it had just cause to dismiss Ms. Pirani from her employment. In the alternative, CIBC submits that Ms. Pirani should be awarded her entitlements under her Employment Agreement, which amount to \$16,923.04, or, if the termination clause in the Employment Agreement is unenforceable, common-law damages in the amount of \$36,458.31 to \$43,825.47, that is, 7 to 9 months of reasonable notice, less her mitigation earnings during that period.

[31] CIBC asserts that Ms. Pirani was a valued employee, but her misconduct was serious and led to an irreparable breakdown of the employment relationship. CIBC therefore had cause for dismissal. Ms. Pirani was an experienced Senior Financial Advisor who was dismissed because she repeatedly breached clear and common-sense policies and procedures designed to protect the bank and its clients, including altering client information on mortgage file documents after they were signed.

[32] It was an express, as well as an implied, term of Ms. Pirani's employment that her employment relationship with CIBC was based on a high level of professionalism, trust, honesty, and integrity. This term of employment is essential given the unique nature of the banking industry, and the way it is perceived by its customers and the community. Abiding by these rules, and abiding by CIBC's policies and procedures, is essential to CIBC's reputation and to the trust required by CIBC of its employees.

[33] Ms. Pirani had been previously warned twice about violating CIBC's policies, including a final warning six months prior to her dismissal. From CIBC's perspective, the breaches of policy were serious and lead to an irreparable breakdown of the employment relationship. Accordingly, CIBC pleads that there was cause for termination.

[34] It was an express, as well as an implied, term of Pirani's employment that her employment relationship with CIBC was based on a high level of professionalism, trust, honesty, and integrity. This term of employment is essential given the unique nature of the banking industry, and the way it is perceived by its customers and the community. Abiding by these rules, and abiding by CIBC's policies and procedures, is essential to CIBC's reputation and is essential to the trust required by CIBC of its employees.

[35] Ms. Pirani's first warning was issued because of her failure to review an overdraft report and ensure that the appropriate action was taken regarding a client account that was overdrawn in excess of the approved limit. The second and final warning was issued to Ms. Pirani for pulling credit bureau records for clients without their signed consent, in breach of CIBC policy and procedure. Following her final warning, Ms. Pirani committed several further breaches, including altering client information on mortgage file documents after they were signed.

[36] CIBC contends that if the bank is found not to have just cause for termination, Pirani's entitlement to reasonable notice is limited by the express terms of her employment agreement (i.e.,

sixteen (16) weeks pay in lieu of notice). In the further alternative, if her employment agreement is not enforceable, Pirani's entitlement to reasonable notice under the common law falls within the range of seven (7) to nine (9) months.

[37] CIBC submits that mitigation is not an issue and concedes that, if there was no cause for dismissal, the plaintiff is entitled to 10% of her salary (\$55,000) for benefits.

[38] CIBC submits that there is no merit to Ms. Pirani's claim for mental distress, aggravated, exemplary, or punitive damages.

VIII. Disposition

[39] For the reasons which follow, I must conclude that CIBC had cause to dismiss Ms. Pirani in July 2013.

IX. The Witnesses

Plaintiff – Naseem Pirani

[40] Ms. Pirani testified that she started off at CIBC as a Senior Financial Advisor in December 2004 and was in this position until November 18, 2010. When she started at CIBC, she had a portfolio worth approximately forty million dollars. In April 2007, she moved to another branch and gained a portfolio of sixty-five million dollars.

[41] As a Senior Financial Advisor for eight years, before assuming her role as a Financial Services Representative, she had a portfolio of high-net-worth clients. She provided recommendations on a range of financial plans and needs and advised the clients how to achieve their financial goals. She took a holistic approach which included financial planning, credit vetting, providing mortgages, lines of credit, and some estate planning. She was licensed by the Ontario Securities Commission, had an IIROC (Investment Industry Regulatory Organization of Canada) license, and traded bank investment products such as mutual funds and other third-party products.

[42] She was persuaded by the manager of the Islington/Steeles branch to join her location in early 2010. Around the same time, she learned that her son in law was diagnosed with an aggressive brain tumor. Her daughter was also pregnant. She was persuaded to join the branch in February 2010. The manager was very supportive. Her son-in-law passed away in April 2010, when her daughter was eight months pregnant. Her daughter came to live with her. She supported her daughter and managed her clients. Her manager, who had been supportive, got a promotion and moved on.

[43] Her assistant went on maternity leave in April 2010. The branch had no manager for a few months. She got an assistant in July and a new manager, Raymond Lou, started in August of that year.

[44] Ms. Pirani stated that she experienced constant harassment from Mr. Lou, who put her through a lot of stress. One day in November 2010, she brought in a note from her doctor to go on sick leave. From her evidence, this coincided with the Mr. Lou handing her a warning letter related to the overdraft issue, discussed below. She was shocked to receive the warning letter. She indicated that she needed his support and she testified that he was not listening to her. She wrote a note on the warning letter and slipped it under his door.

[45] In June 2011, she returned to work on modified duties with a gradual return to full-time work. She testified that Mr. Lou indicated there were no openings, so she asked to go to the West Humber branch and was there from November 2011 to January 2012.

[46] In early 2012, Marina Wahabi, the manager at the Albion and Finch Branch, approached her to come to that branch as a Financial Service Representative. She ultimately signed an agreement in March 2012 with Marina. She testified that aside from meeting the targets, she had had no complaints. At this time, Ms. Pirani's title and the nature of her duties changed, but her salary remained the same.

Marina Wahabi

[47] Ms. Wahabi freely admitted when she had no recollection of certain events, and offered, at a high level, her recollection of some of her conversations with Ms. Pirani.

[48] Ms. Wahabi started with CIBC in April 1994. Since 2019, she has held the position of Community General Manager, a position that entails overseeing four locations. She has eight direct reports. She is responsible for day-to-day operations and coaches the leaders directly. She was a General Manager prior to that, starting in 2016, and a branch manager between 2002 to 2012. In 2012, Ms. Pirani joined her branch in a temporary role as a Senior Financial Services Representative after coming back from leave. Ms. Wahabi offered Ms. Pirani the position of Senior Financial Services Representative and after considering the offer, Ms. Pirani accepted it and signed a new contract on March 17, 2012.

Raymond Lou

[49] Mr. Lou no longer works for CIBC. He had no memory of a number of events, which occurred over 13 ½ years ago by the time of the trial. His fading memory did not affect his evidence on material issues. At times he could not recall details of certain conversations with the plaintiff but could recall dealing with her on key issues.

[50] The plaintiff reported to him between August 2010 until (officially) she gave him the doctor's note in November 2010. He dealt with Ms. Pirani's return to work after her sick leave. He testified that Ms. Pirani never lost her job after returning from long-term disability in June 2011. When she returned to work she was on modified hours and duties. Mr. Lou stated that Ms. Pirani went to other branches to work as a Financial Services Representative after she returned because she was on a return-to-work program. He testified that Ms. Pirani returned to full-time hours but not full-time duties. He claimed she did not tell the Back to Work Coordinator that she was able

to return to full duties. Later, in March 2012, Ms. Pirani voluntarily transferred to the Kipling and Albion Road branch. He did not request a transfer; he received a reference request from that branch and presumed that she had spoken to someone.

X. Assessment of Credibility and Reliability

[51] Ms. Pirani was not a credible witness. Her testimony on material issues was riddled with inconsistencies. She resiled from agreements on facts made before the trial commenced in order to explain away inconsistencies. She admitted to lying to a client. The lack of forthrightness noted by CIBC in one of the warning letters was evident at times. She changed her story several times when confronted with evidence that challenged her version of events. That said, in reviewing the totality of the evidence before me, I may accept some, none or all of any witness' evidence, including Ms. Pirani's. I need not be sure that a witness is telling the truth, I simply need to conclude that they are probably telling the truth: *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41.

[52] As for Mr. Lou, his memory of events was faulty. He relied primarily on the documents, but his memory of key events was supported by the documentary evidence. I found Mr. Lou to be a credible witness, though not necessarily a reliable witness at times due to his fading memory with the passage of time.

[53] As for Ms. Wahabi, I found her to be a generally credible witness. While she too had difficulty recalling details of particular discussions with Ms. Pirani, on material issues, her evidence was corroborated by the paper record.

XI. Analysis

A. The Law

[54] Several decisions from Canada's highest court have repeatedly referred to the comments articulated by Dickson C.J. in *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313, on the significance of work to one's life and wellbeing: see for example, *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, at p. 1002; *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, at para. 93; and *McKinley v. BC Tel*, 2001 SCC 38, [2001] 2 S.C.R. 161, at para. 53. In *Reference Re Public Service Employee Relations Act (Alta.)*, Dickson C.J. noted, at p. 368:

Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.

[55] An employer bears the onus of proving that there was cause for the summary dismissal of an employee: Randall Scott Echlin and Matthew L.O. Certosimo, *Just Cause: The Law of Summary Dismissal in Canada* (Thomson Reuters, 2022), at § 6:2.

[56] In *R. v. Arthurs, Ex parte Port Arthur Shipbuilding Co.* (1967), 62 D.L.R. (2d) 342 (Ont. C.A.), at p. 348, rev'd on other grounds, [1969] S.C.R. 85, Schroeder J.A. defined just cause as follows:

If an employee has been guilty of serious misconduct, habitual neglect of duty, incompetence, or conduct incompatible with his duties, or prejudicial to the employer's business, or if he has been guilty of wilful disobedience to the employer's orders in a matter of substance, the law recognizes the employer's right to summarily dismiss the delinquent employee.

[57] Justice Saunders defined just cause in *Leung v. Doppler Industries Inc.* (1995), 10 C.C.E.L. (2d) 147 (B.C.S.C.), aff'd (1997), 27 C.C.E.L. (2d) 285 (B.C.C.A.) as follows:

Just cause is conduct on the part of the employee incompatible with his or her duties. Conduct which goes to the root of the contract with the result that the employment relationship is too fractured to expect the employer to provide a second chance.

[58] The evidence required to meet this evidentiary burden must be clear, convincing and cogent: *F.H. v McDougall*, at para. 39.

[59] The employer must demonstrate that dismissal is the proportionate response to the alleged misconduct in question, having regard to all the surrounding circumstances: *McKinley* at paras. 53, 56.

[60] In *McKinley*, the Supreme Court of Canada noted that a contextual approach is required in determining whether an employer had just cause to dismiss an employee. The contextual approach examines both the circumstances surrounding the conduct as well as the nature or degree of the misconduct: para. 34. The court must first determine whether the employee's conduct for dismissal has been established on a balance of probabilities. Second, the court must consider the surrounding circumstances of the parties. Third, the court must then determine whether dismissal is a proportional response to the misconduct.

[61] Misconduct that is sufficiently serious that it gives rise to a breakdown in the employment relationship can justify dismissal: *Leitner v. Wyeth Canada*, [2010] O.J. No. 351 (S.C.J.); *Dowling v. Ontario (Workplace Safety & Insurance Board)*, 246 D.L.R. (4th) 65 (Ont. C.A.), leave to appeal refused, [2005] S.C.C.A. No. 25.

[62] In *Dougherty v. Bathurst Golf Association* (1997), 189 N.B.R. (2d) 230 (C.A.), at para. 4, the New Brunswick Court of Appeal noted that "just cause exists where the misconduct in question is 'clearly inconsistent' with the employee's duties under the employment contract."

[63] In *Dowling*, at paras. 49 and 50, the Ontario Court of Appeal explained the contextual approach as follows:

Following *McKinley*, it can be seen that the core question for determination is whether an employee has engaged in misconduct that is incompatible with the fundamental terms of the employment relationship. The rationale for the standard is that the sanction imposed for misconduct is to be proportional — dismissal is warranted when the misconduct is sufficiently serious that it strikes at the heart of the employment relationship. This is a factual inquiry to be determined by a contextual examination of the nature and circumstances of the misconduct.

Application of the standard consists of:

1. determining the nature and extent of the misconduct;
2. considering the surrounding circumstances; and,
3. deciding whether dismissal is warranted (i.e. whether dismissal is a proportional response).

[64] An employer may rely on after-discovered wrongdoing, so long as the later discovered acts occurred pre-termination: *Dowling*, at para. 51; *Lake Ontario Portland Cement Co. v. Groner*, [1961] S.C.R. 553.

[65] Using the contextual approach, an employer may have just cause for dismissal where the employee's dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee's obligations to his or her employer: *McKinley*, at para. 48; *Dowling*.

B. *Application of the Law to the Facts*

I. *The nature and extent of the misconduct – CIBC Policy*

[66] CIBC has a number of policies and procedures that govern their employees' day-to-day activities. Among the policies that were relevant to Ms. Pirani's employment are:

- a) Discretionary Overdraft Limit ("DOL") – Employees are allowed to approve casual overdrafts and amounts above authorized limits so long as they are within the approved DOL outlined in their Authorized Lending Agreement. For example, Pirani's DOL was \$5,000 per customer. If the casual overdraft is more than the employee's DOL, the employee is required to seek approval for the overdraft or direct that the cheques be returned as "Not Sufficient Funds".
- b) Monitoring and Follow-up Procedures for DOL – The employee is responsible for reviewing overdraft reports, which are provided to the employee on a daily basis, to ensure that any casual overdrafts or over-limit amounts granted within the DOL or approved by CIBC are covered by the

client within 15 days. If the overdraft is not covered by the client within that timeframe, the employee is responsible for taking steps to address the matter.

- c) Credit Bureau – In order to retrieve credit bureau information for a CIBC client, the client must have provided written consent for the credit bureau search.
- d) Charting Notes – Mutual fund representatives (such as Ms. Pirani) are required to gather certain information (“Know Your Client”) from the client, update it at the time of every transaction, and include it in charting notes. Furthermore, mutual fund representatives must record details of their conversations with the clients in the charting notes. Mutual fund representatives must chart all conversations with clients, even if there is no paper record or transaction completed. Charting notes are to be completed after the conversation with the client or within 24 hours.

(a) Charting Notes

[67] Ms. Wahabi testified that investments that fluctuated required charting notes. Charting notes are required to ensure the bank has some internal record of what was discussed with a client regarding their investments, what was recommended, why it was recommended, the client’s risk tolerance, and whether verbal or written consent was given. Charting notes are required by the Ontario Securities Regulator.

[68] In both her role as a Financial Services Advisor and a Financial Services Representative, Ms. Pirani assisted clients with their short- and long-term financial needs, captured and validated clients’ personal and financial information, performed due diligence on any transaction, and was to ensure that documentation was completed in accordance with CIBC policy and procedure. She was aware of the requirement for charting notes and the required information to be included due to her position as Financial Services Advisor. She agreed that accurately reporting the required information was important, but she claimed the risk involved, if any, was not to the bank and the client. She referred to certain other checks which were performed after a trade was completed.

[69] Ms. Pirani stated that in her role as a Financial Service Representative, Ms. Pirani used a template for her charting notes provided to her by another employee. Even though she had been a Senior Financial Advisor for eight years (a level 7 position) before assuming the role of Financial Services Representative, she claimed not to know the meaning of some of the information in the template. Ms. Pirani used the same mutual fund number for all the clients and was oblivious to that fact. She claimed that the first time she realized this error was during this litigation.

[70] She claimed she was told by the individual who gave her the template that the mutual fund account number could not be changed. I did not find her evidence to be credible. When questioned about the fact that she used the same mutual fund number in her charting notes, she claimed she was told it could not be changed. She went on to state: “I was thinking that was the number for the

bank.” This is a shocking admission as one would expect Ms. Pirani to at least know the transit number of the bank where she was working.

[71] While Ms. Pirani acknowledged that there were other aspects of the template that she could change, she was also shown several charting notes for different clients which had the exact same content for the same fields for the different clients, including the purpose of the meeting, recommendations made, and the amount of the invested. She remained unfazed, stating that there was no risk to the bank because any mistake would have been caught later on. She refused to acknowledge any mistakes or inaccuracies, stating that there were no other options for Financial Services Representatives. For “moderate risk” clients, for example, Ms. Pirani admitted that aside from the time of the meeting, and the amount being invested by the client, she would use the same content. Even at the trial, she saw nothing wrong in doing so and claimed the charting notes put to her were accurate. By her own admission therefore, she was using essentially the same charting notes for “moderate risk clients”.

[72] Ms. Pirani testified that when one is using a template, there is always a chance that something will be missed. She indicated that there was an incident where she placed the wrong charting notes in a client’s file. She explained that these are mistakes that can happen with anybody and noted that there was no incident of her making a trade for the wrong amount.

[73] Ms. Pirani’s failure to recognize, even at the trial, the importance of maintaining accurate charting notes for each client, and her insistence that any mistake could be caught later, disregards entirely the requirement to keep accurate records which is essential for CIBC to maintain client service, ensure regulatory compliance and mitigate risk. I note that the requirement was incorporated by reference into her employment agreement. This was a serious breach and demonstrated a lack of judgment on Ms. Pirani’s part, putting the CIBC and potentially its clients at risk. Charting notes were mandatory for certain investments. Given her education, training, license to trade mutual funds, and eight-year experience as a Senior Financial Advisor, Ms. Pirani’s cavalier attitude to using the same charting notes for clients of the same risk demonstrated that she did not consider, as required, each client’s individual risk tolerance and needs.

[74] The issue with the charting notes can be placed in the context of historical misconduct. Ms. Pirani’s failure to recognize the importance of adhering to CIBC’s policy and procedure on this score, and the refusal to acknowledge her obligation to make accurate charting notes, is symptomatic of her refusal to adhere to the bank’s procedures and go her own way. I am satisfied, on a balance of probabilities, that this misconduct was serious. While it is historical, I am persuaded that it ought to be considered as part of the cumulative misconduct of Ms. Pirani in determining whether the response by the CIBC in terminating her was proportionate in the circumstances.

(b) Overdraft

[75] Ms. Pirani failed to review an overdraft report and ensure that the appropriate action was taken regarding one of her client accounts. The account was overdrawn by \$29,509.42, which was

in excess of any approved limit. Ms. Pirani did not review the overdraft reports in a timely fashion and address any overdrafts.

[76] Mr. Lou gave evidence on the overdraft account issue and his meeting thereafter with Ms. Pirani, which was followed by the first warning letter in November 2010. The parties agreed to the truth of the contents of the first (November 17, 2010) warning letter. Mr. Lou testified that it was Ms. Pirani's job responsibility to review the overdraft (CDS) reports on a daily basis.

[77] In contrast, at trial, Ms. Pirani insisted that it was her assistant who had the primary responsibility for addressing any overdrafts. She claimed it was only her responsibility if she was notified about the overdrafts. She stated that the reports went to her assistant, who had the responsibility to bring any report to her attention. At her examination for discovery, she conceded that as a professional, CIBC trusted her with certain tasks, and she agreed that that one of her responsibilities was to review the overdraft report and take primary responsibility for addressing any overdrafts.

[78] I note that Ms. Pirani had a discretionary overdraft limit of \$5,000. There is no evidence that her assistant had such a limit. Mr. Lou identified the situation as a problem, but Ms. Pirani stated: "Well, it was a problem if I did not know the client; if the client was not a high-net-worth client; if there was no other asset that we could cover the overdraft. So, if none of that was there, then yes, it would have been a problem. But there was no, no risk to CIBC."

[79] I find that it was Ms. Pirani's primary responsibility to review the overdraft report. I also find that Ms. Pirani's attempts to shift blame for reviewing the overdraft report on a timely basis and address any overdrafts, and her attempt to justify why the bank was not at risk, disregards the bank's primary concern, and that is that she carries out her job duty. In my view, this was a serious breach of the bank's procedures. Instead, Ms. Pirani testified that the bank was not at risk because it was a high-net-worth client who had a Tax-Free Savings Account. She indicated that she was confident that there would be no loss to CIBC. She stated the client did remedy the situation and cover the overdraft in November 2010; she claimed two days later he had \$80,000.00 in his account, and two days afterwards he had \$180,000.00 in his account. She did not provide any explanation as to why she would have access to this information about the client after the overdraft situation was remedied.

[80] Based on her evidence, at the trial, Ms. Pirani was prepared to abdicate what she admitted on discovery to be her primary responsibility, and to shift the blame to someone else. She did not demonstrate any insight into why it was a concern for CIBC that she adheres to the policy; these factors make render's the non-adherence to the bank's policies serious. The fact that the bank's high-net clients may over a potential loss does not mitigate against compliance with the bank's policies and procedures. In this case, the potential loss to the bank, at one point, had been \$45,000.00.

[81] Once again, I find that Ms. Pirani's lack of judgment and awareness of the real risk faced by the bank, and her lack of acceptance of her responsibility, to be gravely serious. Again, this

misconduct, which has been established on a balance of probabilities, is historical, but the bank has satisfied me that this misconduct should be part of the cumulative breaches to be considered by the court.

(c) Accessing clients' credit bureau information without signed consent

[82] Section 2.3 of the Code of Conduct deals with “action within our scope of authority” and reads:

2.3 Action within Our Scope of Authority

We are all accountable for acting within the scope of our employment or contractual duties and delegated authorities. We must not:

- give client’s financial, trust, tax, investment, legal or other advice unless this is within the scope of our employment or contractual duties, and we hold the appropriate qualifications and licenses to do so;
- act outside the scope permitted by our professional license, regulatory registration or delegated authority; or
- process a transaction, whether for client or for CIBC, without proper authorization and documentation.

[83] On January 25, 2013, Ms. Wahabi and Venki Raman, the District Vice President, met with Ms. Pirani to review complaints from customers regarding pulling their credit bureau profiles without consent. Ms. Pirani also received a warning letter with respect to credit bureau checks on February 12, 2013. The parties agreed to the truth of the content of Ms. Wahabi’s January 30, 2013 email to Mr. Raman setting out what took place at the meeting and also agreed on the truth of the contents of the warning letter.

[84] Ms. Wahabi could not recall who the clients had complained to but had taken the notes during the meeting. The parties also agreed to the truth of the contents of Ms. Wahabi’s email memorializing the meeting.

[85] With respect to credit bureau profiles, Ms. Wahabi explained that an employee will reach out to the credit bureau when they have a signed consent and are “processing” the loan application. This is done in the context of a loan, mortgage, or line of credit. As the application is being processed, and the employee gets to that panel, the employee will proceed with the check. The credit bureau information reveals any bankruptcies, loans, and payment history, among other things.

[86] Ms. Wahabi testified that one of Ms. Pirani’s clients had complained about a November 14, 2012 incident; the client had not signed anything, and had not been aware that the credit bureau check would occur.

[87] Ms. Pirani claimed that the client came in for a mortgage and she did not want her husband to know. Ms. Pirani stated that she pulled the credit bureau profile but had received oral consent to do so from the client. At the meeting with Ms. Wahabi, Ms. Pirani was asked whether this was the only incident and stated that it was. She was then confronted with other incidents, and acknowledged them. Ms. Wahabi testified that she gave Ms. Pirani some coaching after the incident.

[88] On January 9, 2013, a client raised concerns with CIBC that Ms. Pirani had pulled her credit bureau information without her consent, and the co-borrower's credit bureau information was also pulled without his consent. The client told Ms. Wahabi that the co-borrower was not present at the meeting. Ms. Wahabi did not recall who the client complained to or how she became aware of the incident. After learning about the incident, she had another discussion with Ms. Pirani. She had no recollection of the conversation except for directing Ms. Pirani back to due diligence; explaining that there was a privacy breach, because information of the co-borrower was shared with the sister of an employee who worked at the bank in breach of the Code of Conduct; and emphasizing the importance of confidentiality, "knowing your client", and validating the identity of the client.

[89] With respect to this incident, Ms. Pirani testified that a client came in for a loan and gave her oral approval to check her credit bureau profile. She claimed she asked the client to sign the paper while she was looking at her credit bureau profile. She stated: "I looked at it and it wasn't looking like I would be able to give her the credit, the line of credit that she was looking for". She claimed when she conveyed this information to the client, the client was upset, and got up without signing the paper. She testified that the client came in a couple days later to see another financial advisor. Ms. Pirani motioned to that advisor to come over to her office. She testified that "I told her that this client had walked away from my office a couple days ago and she did not have the credit bureau signed, if she can sign the credit bureau before she does anything." She further testified: "What I found out later was that Sonia had gone and talked to Marina [Wahabi] and told her what had happened, that Ms. X did not sign the consent and she had to sign the consent. Mind you, we can be colleagues. We can be friends, but you are in the service environment. Dog eat dog world. She could not make a sale, but she had to work. You know, for me, she had to review the form, so she complained about me." She accepts no responsibility for not complying with CIBC's policies but attempted to shift the blame to her colleague whom she suggested reported the issue to her manager.

[90] When the following note was put to Ms. Pirani in cross examination: "You replied the client was pushing you, but also admitted you did it without consent", she insisted that she had verbal consent.

[91] In my view, despite the coaching, courses and warning, Ms. Pirani refused to follow the bank's policy. Her refusal was not an isolated incident but a pattern of behavior which she refused to cure. This breach put the bank at risk of allegation of privacy breaches and reputational harm. Customers of the bank complained about unauthorized accessing of their credit bureau information. Ms. Pirani continued to breach the policy.

[92] The plaintiff pleads in her statement of claim at paragraphs 21, 22 and 24 as follows:

21. On February 12, 2013, another written warning was given to the plaintiff. The issues raised were regarding undertaking credit inquiries before obtaining client consent in writing.

22. The plaintiff states that it was an accepted practice at her employment to rely on verbal consents to do a credit check. The managers were aware of this and never informed staff that written consents must be obtained on every occasion before doing credit checks. Such clients were expected to sign paperwork (including the required consent) once the paperwork was completed.

24. The plaintiff followed the same practice over the eight years she worked under various managers, and to the plaintiff's knowledge all other FSRs followed similar practice in that sometimes oral consents by the client were obtained to conduct credit searches. [Emphasis added]

[93] Aside from her pleadings, and contrary to what Ms. Pirani initially told her manager about there being only one incident, following her termination, Ms. Pirani wrote to the Ontario Securities Commission and sent an email to the Mutual Fund Dealers Association of Canada. In a letter dated August 21, 2013 to the Ontario Securities Commission, Pirani indicates that she had proceeded with pulling clients' credit bureau information with only verbal consent numerous times. The content of the letter was regurgitated in an email dated October 28, 2013, to the Mutual Fund Dealers Association of Canada. Ms. Pirani writes, in part:

I had received a warning letter on February 12, 2013 in regards to a couple of incidences where I had acted upon clients verbal consent to pull their credit bureau. In my profession as a Financial Advisor, I have had to act on clients (sic) verbal consent numerous times due to clients not able to get to a branch in a timely manner and once all documents are ready to be signed, the client would then come into the branch once and have all signing done in that one visit. I was told that I needed to get a written consent and I then proceeded to follow that process.” [Emphasis added.]

[94] On cross examination, she agreed the client's SIN number was required to run a credit bureau check, though she claimed, “not at all time[s]”. On cross examination, she agreed that when she ran a credit bureau check, she would have a picture of the client's finances and the result of the credit bureau check was relatively detailed. She was able to see the credit score, loans, liabilities, and dollar amounts for loans. She agreed the information was personal and private to the client. She testified that the client's permission had to be obtained and it was an oral process, and the form was signed when she was face to face with the client.

[95] She testified that it was her understanding that after she obtained the verbal permissions, she could run the check. She testified that she would get the written consent after running the check

as it was a requirement of the bank. She understood the bank had that requirement for its own protection. Ms. Pirani claimed that it was her understanding that others were also obtaining oral consents if the client was on the phone, unless the client walked in and was in the office. All of this is contrary to her concession, memorialized in the warning letter, that she was aware that signed consents were required. On cross examination, she also acknowledged taking the annual courses on the bank's Code and policies.

[96] In my view, this conduct was extremely serious and put the bank at risk of privacy breaches. Even at trial, Ms. Pirani appeared impervious to the seriousness of her actions. She claimed she was not given the chance to obtain signed consents as the files were taken away from her, again disregarding the importance of obtaining a signed consent before pulling the client's credit bureau information. In fact, she disagreed that her actions with respect to the credit bureau checks violated CIBC's code of conduct. Section 6.1 Protecting Confidentiality and Privacy prohibits "any unauthorized use, collection, disclosure, or access of personal information." Ms. Pirani acknowledged being familiar with the clause in the Code dealing with acting within the scope of one's authority. She agreed the provision meant that she could not process any transaction without proper authorization and documentation.

[97] Contrary to what is set out in the February 12, 2013 warning letter, i.e., that she admitted that she knew she had to get the signed consent and that she always did, admissions in her statement of claim, coupled with her letter to the Ontario Securities Commission and the Mutual Fund Dealers Association of Canada, make it clear that pulling credit bureau information without securing a signed consent was Ms. Pirani's default process. This is in fact consistent with her explanation as to why she did not believe that her actions violated the Code of conduct. The fact that she had been doing so was only brought to CIBC's attention because of a complaint by a client. On cross examination, she agreed that it would be a serious matter if a client raised an issue with the CIBC regarding a lack of consent, but she claimed in this instance the client was not telling the full story because she had her verbal consent.

[98] It is evident from all the evidence that Ms. Pirani routinely pulled a bank customer's credit bureau information before the loan was being processed, and before obtaining their signed consent. As noted above, Ms. Wahabi testified that the process involved the client applying for the loan or mortgage; they would be advised that their credit bureau information would be pulled; the client would then sign a consent for the employee to proceed with the credit bureau. As the application is processed, and the employee comes to that panel, they would fill it out in the bank's system.

[99] The Code contains provisions on customer privacy and business need-to-know. Ms. Wahabi's evidence reveals that the credit bureau profile contains the most sensitive private information about a bank's client, validating not only a client's liability and assets, but also disclosing information about the client's credit, repayment history, and whether they had any bankruptcies. Ms. Pirani was trained and coached on due diligence to make sure both the bank and the client are aware that they are doing a credit bureau check. She acknowledged that CIBC circulars, policies and procedures were housed on CIBC's intranet.

[100] Ms. Pirani must have recognized that there was some risk to CIBC because on cross-examination, she agreed that it was not good for CIBC for clients to be complaining that their credit bureau was pulled without her consent.

[101] Ms. Pirani having admitted that she pulled clients' credit bureau information without their signed consent, CIBC has established this breach of the Code on a balance of probabilities. It is, as Ms. Pirani herself conceded, serious when the clients complain.

[102] I find that CIBC has established, on a balance of probabilities, that the misconduct occurred. I find that the misconduct is a serious breach of CIBC's Code, its policies, and its employment agreement with Ms. Pirani. In the result, her failure to adhere to these policies was incompatible with her employment duties to CIBC and prejudicial to CIBC's reputation and integrity in the banking industry.

(d) Opening accounts without clients' knowledge

[103] It was an express, as well as an implied, term of Pirani's employment that her employment relationship with CIBC was based on a high level of professionalism, trust, honesty and integrity. The policy states:

Conduct at CIBC

Trust and Honesty - Your employment relationship in CIBC differs from other types of employment. This is due to the unique nature of the banking and financial services industry, and the way it is perceived by its customers and the community at large. The employment relationship is based upon a very high level of trust between CIBC and its employees. Our employees must not only be, but also be seen by their customers and the community, to be honest and above reproach, and must conduct themselves at all times to meet this level of trust.

[104] Ms. Pirani had also expressly contracted to be bound by the CIBC's requirement of trust and honesty as part of her employment agreement. The clause also appears in Ms. Pirani's employment agreement:

Trust and Honesty - Your employment relationship in CIBC differs from other types of employment. This is due to the unique nature of the banking and financial services industry, and the way it is perceived by its customers and the community at large. The employment relationship is based upon a very high level of trust between CIBC and its employees. Our employees must not only be, but also be seen by their customers and the community, to be honest and above reproach, and must conduct themselves at all times to meet this level of trust.

[105] Ms. Wahabi described the CIBC Code of Conduct as, among other things, “trust[ing] team accountability, making sure that we follow procedures, we adhere to the policies”, and not exposing the bank to risk. The employees attest to it every year through annual mandatory online learnings to make sure they are abiding by the Code. The Code is also made available to employees when they are first hired. The Code resides as well on the CIBC internal website.

[106] In my view, Ms. Pirani abdicated the “trust and honesty” requirement in her next dealing with a client in the situation below. It may well be that this evidence only came to light while she was on the stand. In a warning letter, CIBC raised concerns about Ms. Pirani's lack of forthrightness. It was only after other incidents were placed in front of her that she acknowledged the other incidents. Ms. Pirani's lack of forthrightness was on full display when she lied to a client, by her own admission on the stand, to secure the client's signature without revealing to the client that a bank account had been opened without the consent of the client.

[107] Ms. Pirani testified that towards year-end, Mr. Lou asked his team how many accounts could be opened to bring their numbers up. Mr. Lou subsequently raised the issue of accounts being opened without the client's knowledge. Ms. Pirani testified that Mr. Lou had a meeting separately with each individual to address this issue, and she revealed she had only opened three or four such accounts without consent. She claimed that her assistant had opened four accounts without the client's knowledge. She testified in chief that it was a fraud and against the CIBC's Code of Conduct to open an account without the knowledge of the person. She testified that Mr. Lou never advised them to close the accounts but told them to do what they had to do and go get the papers signed. The assistant was not called to testify. However, Ms. Pirani stated that she contacted one of the four clients. She testified that she went to the client's home. She did not tell the client an account was opened without her knowledge because she did not know how she would react. She admitted that she did not tell the client the truth, but rather told her that they had some targets to meet and that there was a promotion if the client could help her out, and have the account open, and she told the client she had brought the relevant papers with her. It was evident that Ms. Pirani did not appreciate as she gave this evidence that she was admitting that she had also breached other provisions of the Code, which required full and fair disclosure and sought to prohibit misleading communications.

[108] Sections 1.2 of the Code which existed at the time of Ms. Pirani's conduct dealt with “Honesty and Integrity”, and clause 1.4 of the Code dealt with “Full and Fair Disclosure”. Those provisions read as follows:

1.2 Honesty and integrity

The financial services industry in which CIBC operates is built on the highest level of Trust. Integrity is a cornerstone of our business. Employees must act honestly and fairly and exhibit high ethical standards in their dealings with all Stakeholders. Engaging in dishonest or unethical activity negatively affects employees and CIBC. It erodes client trust and may weaken our reputation within the community.

All communications must be truthful, and must not intentionally directly or indirectly mislead others.

Involvement or even attempted involvement in dishonest activity is unacceptable and may result in disciplinary action, up to and including termination of employment.

Should an employee suspect a customer or an employee of dishonest or unethical activity, it is their responsibility to report matter to their manager or to Corporate Security.

Should an employee suspect their manager, they should contact Corporate Security or Employee Relations. [Emphasis added]

[109] Clause 1.4 of the Code states in part:

1.4 Full and Fair Disclosure

All employees involved in preparing or providing information for inclusion in any reports or documents which CIBC is required to file with any governmental or regulatory agency or any public communications are responsible for ensuring that (i) information provided is complete, accurate and current, and (ii) reports and documents are prepared in conformity with all regulatory requirements and filed in a timely manner. In addition, all such employees must produce full, fair, accurate, timely and understandable disclosure in reports and documents that CIBC files with, or submits to, regulators as well as in public communications made by CIBC.

[110] The new Code which came into existence in December 2012 (which does not apply in this case but reflects CIBC's worldview and the cornerstone of its business) contained similar requirements. Section 2.1 of the Code addresses "Acting with Honesty and Integrity" and states:

Preserving trust and acting ethically are at the heart of what we do and how we do it. Each of us has a fundamental obligation to act honestly and with integrity at all times. This means respecting both the letter and the spirit of the Code in everything we do.

Failing to follow the Code or comply with the law risks exposing CIBC, as well as its employees and contingent workers, to serious regulatory consequences and reputational harm.

[111] Section 5.3 of that Code deals with full and fair disclosure and states:

5.3 Full and Fair Disclosure

All of our communications, whether internal or external, must be truthful, accurate and complete, and must not mislead others. This applies to all methods of communication, including oral, in print, or via the Internet (including blogs, online social media sites, e-mail or on webpages).

This standard applies whenever or wherever we are performing work for CIBC, including when we are preparing or providing information for inclusion in any report, system, document or other communication.

[112] While there is insufficient evidence for the court to find, on a balance of probabilities, that Ms. Pirani had a hand in opening any accounts without the client's knowledge, she admitted, on the stand, that she did not tell the truth, and in obtaining the client's signature under false pretenses, she was guilty of dishonesty and misleading the client. This is a most serious and egregious admission by Ms. Pirani and, in my view, further underlines the incompatibility between Ms. Pirani's obligations and duties and her actual conduct. Her admission is the antithesis of integrity.

(e) Files left out in her office overnight

[113] The issue with the files appears, at first blush, to be minor, but is in fact indicative of Ms. Pirani's cavalier attitude to client privacy and confidentiality. In 2010, Ms. Pirani was spoken to by Gerri Roccia, Business Risk Leader, during a spot audit, about leaving files out overnight, regardless of whether her door was locked. In an email dated October 25, 2010, re: "Privacy Policy – Naseem's Office", which the parties agreed to admit for the truth of its contents, Mr. Roccia wrote:

Hi Raymond,

A few months back I spoke to Naseem regarding files left out in her office overnight. Today in passing her office, I noticed there were some files sitting on the top of the filing cabinet in her office. Although her door was locked, she was told this was not acceptable and all files were to be put in a locked cupboard overnight regardless of her door be locked. She told me it was acceptable in the other District she worked at which is not the case in CIBC. I also advised her that I would be checking her office when I visited. I was very disappointed to see that she has not yet corrected the issue. I was able to read the name of the client on the file folder left out. This is a very serious matter and would appreciate you having another conversation with her.

[114] Mr. Lou had a joint coaching session with Ms. Pirani, and confirmed in writing that this was a serious matter and further breach of the privacy policy would not be tolerated. In his email dated October 26, 2010, Mr. Lou stated:

Hi Naseem,

Further to our joint coaching with our CSM, I want to confirm that both of us view the violation of privacy a serious matter. You will be expected to lock up all your files/anything with personal information even if your door is locked.... Further violation of the privacy policy will not be tolerated.

[115] Despite being spoken to and coached on at least two occasions in 2010 to the effect that the violation of a client's privacy was a serious matter, she continued to leave client files out of filing cabinets overnight. At the trial, she insisted that her door was locked and testified that it was not a breach of privacy to see a client name on a folder if one could not see any other information. Indeed, she not only questioned but also sought to minimize the seriousness of the matter. She claimed there were no papers lying about, just a file with a name. She claimed if her door was unlocked, it would be a different matter. She appeared not to appreciate the need for privacy and confidentiality with respect to the name of a client, and sought to deflect, once again, responsibility for not adhering to CIBC's policy and procedure. When asked if she agreed that it was a serious matter, she responded: "Absolutely not." It is evident from Ms. Pirani's testimony that despite previous warnings and coaching, she would continue to do things her way. A breach of confidentiality is a most serious breach.

(f) Approached another employee for co-borrower's information

[116] CIBC says that Ms. Pirani asked a co-borrower's sister, who is an employee at the branch, for information to update the co-borrower's asset and liability information. Ms. Pirani acknowledged the contents of the email dated January 30, 2013, from Ms. Wahabi to Mr. Venki regarding the notes of their meeting with her on January 25, 2013 were true. The email indicates:

Privacy issue – Naseem asked the co-borrower sister, who is an employee at the branch to update the co-borrower's Asset/liability. (Naseem said that she wanted to know the co-borrower's (sic) marital status. Naseem stated that she submitted the application under the BTB knowing it would not get approved. Application was incomplete. Naseem stated that she talked to the co-borrower over the phone to request his information and has never met him."

[117] At the trial, Ms. Pirani not only attempted to resile from her concession that the contents of the email were true, but she also provided two different versions as to what had occurred. On cross examination, she claimed she had approached her colleague before she met the co-borrower client and it was only to obtain a phone number, prior to meeting the client, so she could contact her to have her come in. This is at odds with her earlier testimony that she overheard a conversation while the co-borrower client was in the branch, offered to help, and took the woman to her office.

[118] I find, on a balance of probabilities, that Ms. Pirani did ask her colleague for information to complete the co-borrower client's application, in contravention of the bank's privacy policy. I find that there were two breaches of the Code (privacy and "know your client"), which were serious, and are established on the evidence, on a balance of probabilities.

(g) Using the wrong designation

[119] CIBC has not established, on a balance of probabilities, that Ms. Pirani's continued use of the Financial Advisor designation on payout statements after she became a Financial Services Representative was intentional. I accept her explanation that this was a mistake, as she used a template which had her signature of Financial Advisor.

(h) Altering signed payout statements after mortgage funded

[120] Ms. Wahabi testified that Ms. Pirani gave her manager a mortgage file after it had been funded. She testified that this was contrary to CIBC's process. Ms. Pirani's actions bypassed managerial review process before the mortgage is funded and the bank's protocol of ensuring all the proper documentation and information is in the file and in the system before funding is released. She also stated that Ms. Pirani had crossed out information on certain payout letters after the client had signed them and without the client's knowledge. Ms. Pirani was going to mail the payout letters to other financial institutions. Ms. Wahabi stated that these issues only came to her attention when Ms. Pirani gave her the file to sign off on before it was sent off for record keeping.

[121] At the trial, Ms. Pirani sought to minimize the importance of altering the mortgage payout statements because of the amounts involved. Ms. Pirani says that she was not shown the payout statements prior to being terminated.

[122] She initially stated she did not know which client was involved because the document had been redacted. Nonetheless, she went on to give evidence as if she knew exactly which client was involved. On cross examination, she admitted that parts of the mortgage payout letters had been crossed out after the client had signed them.

[123] The parties produced three signed payout letters (redacted for client information), in which the first two sentences were scratched out. Ms. Pirani was taken to one of them in chief and speculated that maybe there was nothing to pay off. She then claimed that even if the letter did go out like that, with sentences scratched out, she had not changed any amounts. She explained that if there was any change in amounts, it would be based on a per diem adjustment. She stated: "I would think that it happens all the time when you are doing a pay out." Again, she failed to appreciate that the payout statements should not have been altered after the client signed the document.

[124] She acknowledged that the July 11, 2013 payout statement had criteria which she set for the loan. The letter read:

In accordance with our client's instructions below, please close the above-mentioned more unity account, effective immediately. If the credit facility cannot be closed due to monies owing, please reduce its limit to its current outstanding balance, and do not process further limit increases.

[125] In my view, Ms. Pirani altering the payout statements after she had set the criteria for closing the client's accounts with the various facilities, after the client had signed the payout statements, and after the funds had been advanced, as she admitted, was a serious breach of the Code.

[126] CIBC has established, on a balance of probabilities, that Ms. Pirani altered the payout statements after the client had signed the letter.

[127] I also find that Ms. Pirani bypassed bank protocol when she allowed a mortgage to be funded before the file was reviewed by her manager. In chief, in the midst of leading questions, she admitted that the funds had already been advanced, and that is how she paid off the pay outs.

[128] There is no suggestion by CIBC that Ms. Pirani benefited personally from altering the payout statements. The bank's position is that by doing so, she placed the bank at risk, a notion that Ms. Pirani disagrees with. Ms. Pirani says that she has never qualified a client based on incorrect information, as that would be fraud. CIBC maintains these protocols were designed to protect the bank and its clients. I agree with CIBC.

(i) Attendance Issue

[129] Ms. Pirani apparently left early one day in July 2013, and failed to come in on multiple days on a weekend that she had been scheduled, after leaving to go home sick. CIBC says on one occasion, she left on a Thursday, did not show up for her schedule on the weekend, and turned up on the Monday and refused to go home when asked. There were other issues raised around attendance and scheduling by both Ms. Pirani and CIBC, all of which took place in July 2013.

[130] In my view, the attendance issues are minor and I accept Ms. Pirani's explanation about calling in and the schedule being changed. Ms. Wahabi had no recollection of whether the schedule had been changed.

(j) Not being respectful

[131] CIBC takes the position that Ms. Pirani raised her voice and swore at an assistant branch manager. Ms. Pirani acknowledges using the word "shit" towards her manager on July 14, 2013, but said that she used it in a friendly and joking manner. She claimed after she got ready to leave, she was asked where she was going, and she responded, "Don't give me shit now," which was said in a particular context, and had the meaning of, "Come on now!". Ms. Pirani explained that on a prior day, she wanted to leave early, and the bank manager asked her to do some grocery shopping for her, then indicated she could leave early.

[132] This was an isolated incident and given her explanation with respect to her earlier exchange with the assistant manager, the comment is understandable. In my view, CIBC has not established on a balance of probabilities that Ms. Pirani's conduct rose to the level of being disrespectful.

(k) General attitude towards the Code

[133] CIBC's policy and procedures direct that an employee should not skip steps. When asked, on cross-examination, if she agreed that it was not acceptable to skip a step in the policy or procedure to save time for a client, Ms. Pirani would not provide a direct answer. She explained:

I want to elaborate on that. Although this is on paper, there are times when we had to see clients one after the other. And, paperwork needed to be done at the same time so if you want to say skipping a step, my charting notes, my charting notes would not have been done soon after the meeting. And, so, you are in the field. This is on paper, but when you are actually doing the work, there are times that you cannot function like that. It is impossible; our target was such, it was not possible unless we were to sit back and do the paperwork and do the phone calling and all of that. Sometimes we couldn't follow exactly what the Code says.

[134] She nonetheless agreed that the Code said that she was not to skip a required policy step or required policy procedure. When asked if she skipped steps all the time, she responded: "Well it is not just me. Every one of us would not be able to do it at all times. So, it is not that I wasn't doing, skipping a step every time, but everyone one of us would not be able to manage doing our job with what the job required." She would not categorize what she had been doing as breaching the expectation of the Code. She stated: "I wouldn't say I was breaching it; I was just trying to do my job as much as I could." She considered skipping a step that was detrimental to the bank to be a breach. Elsewhere in her testimony she agreed that it is common sense that the bank would want to protect itself from risk.

II. Surrounding circumstances of Ms. Pirani and CIBC

[135] The CIBC Code of Conduct indicates that the principles outlined in the document are meant to do the following:

- i. establish a minimum global standard of conduct by which all CIBC employees are expected to abide;
- ii. protect the business interests of CIBC, its employees and customers,
- iii. maintain CIBC's reputation for integrity, and
- iv. ensure that CIBC, through its employees, complies with applicable legal and regulatory obligations.

[136] The Code states that a breach of its provisions could lead to immediate termination of employment without notice. Further, Ms. Pirani's Employment Agreement included the following agreed terms with respect to termination of employment:

Termination of Employment

With Cause – CIBC may terminate your employment without notice or pay in lieu of notice, for cause. Cause includes, but is not limited to, dishonesty, failure to perform your duties in a satisfactory manner or a material breach of the terms and conditions of your employment, including any applicable Code(s) of Conduct.

[137] Ms. Pirani was required and expected under the Code to abide by the principles below. By virtue of her employment agreement, these principles were incorporated, by reference, into her employment agreement:

- treat everyone with respect;
- maintain complete and accurate records;
- ensure that all communications are truthful, accurate, and not misleading;
- act within the scope of their authority; and
- follow all of CIBC’s policies and procedures.

[138] The Code provides that an employee may be terminated for contravention of the Code. The Code provides:

Contravention of any provision of the Code by an employee may result in disciplinary action up to and including termination of employment for cause, without notice or pay in lieu of notice, in addition to possible civil, criminal or regulatory action. Such conduct may also affect individual performance assessment and compensation.

Contravention of any provision of the Code by a contingent worker may result in action by CIBC up to and including termination of the individual's governing contract without notice as well as possible civil, criminal or regulatory action.

Your Obligation to Report Code Violations

As part of being accountable to each other and to CIBC, each of us has an obligation to report all Code violations:

by speaking to our manager or to the appropriate contact listed in section 9,

by calling the confidential Ethics Hot line, or

by using the reporting procedures as otherwise set out in the Code or in an applicable CIBC policy.

[139] At hire, and during her employment with CIBC, Ms. Pirani signed offers of employment and employment agreements (most recently in March of 2012, referred to as the “Employment Agreement”), which contained terms of employment.

[140] By signing the offer of employment and Employment Agreement, Ms. Pirani expressly acknowledged that she had read and understood their contents; that she had the opportunity to obtain independent legal advice with respect to them; and that their terms were reasonable. At trial, Ms. Pirani admitted that she had read the Employment Agreement and understood it. During her employment, Ms. Pirani was able to review all CIBC policies through the company’s intranet.

[141] Ms. Pirani’s Employment Agreement incorporates the Code, which sets out the standards of ethical and professional behaviour required of CIBC’s employees, as well as the consequence of a breach of such standards. Ms. Pirani was obligated to uphold the Code’s principles.

[142] The Employment Agreement included the following agreed terms with respect to Ms. Pirani’s conduct while employed with CIBC:

Conduct at CIBC

Adherence to CIBC Policies and Procedures – You will be required to become familiar with and abide by all CIBC’s by-laws, rules, regulations, procedures and policies, and in particular, those that apply to your day-to-day job duties, including the terms of this Agreement and CIBC’s Code(s) of Conduct which are incorporated into your employment contract by this reference. You will be expected to review those documents at least on an annual basis. [Emphasis added]

[143] Ms. Pirani testified that prior to 2012, there were no complaints whatsoever with respect to her performance. She claimed the complaints started in November and December of 2012 and January 2013, followed by a warning letter in 2013. In fact, the warning letter regarding the overdraft issue was delivered to her in November 2010.

[144] At the time of her termination, Ms. Pirani was 58 years old. She had recently been on sick leave due to stress. Her son in law had passed away in April 2010, but by 2013, she was in a better place, except financially, than she was in 2010. She had held the role of Senior Financial Advisor for approximately 8.3 years before accepting a lower-level position as a Senior Financial Representative, a position that she had been in for four months at the time of her termination. In the result, she had been with CIBC for 8.7 years. She was a licensed mutual fund dealer. She was able to place trades.

[145] She was licensed by both the OSC and IROC. She traded bank investment products such as mutual funds and other third-party products. In both roles with CIBC, she had access to the bank’s clients’ private, sensitive financial information. In both roles she was to accurately capture and validate clients’ personal and financial information, and ensure all documentation was completed in accordance with CIBC policies and procedures.

[146] Her employment relationship with the CIBC was premised on honesty and integrity, and full and fair disclosure.

[147] The CIBC Code and policies were incorporated in her employment agreement. Ms. Pirani was contractually bound to abide by the CIBC's Code of Conduct. Under the Code, as part of CIBC's mandatory training and testing program, Ms. Pirani had to complete an annual certification, attesting to familiarity with and adherence to the principles of the Code and all its provisions.

[148] CIBC is also a chartered bank, which is a public corporation licensed by the federal government to engage in banking. Chartered banks are regulated by the *Bank Act*, S.C. 1991, c. 46, and supervised by the Superintendent of Financial Institutions. As a chartered bank, CIBC accepts deposits from customers, extend personal and commercial loans (mortgages, loans, credits), and maintain deposits and engage in other monetary transactions. Inherent in its business model is trust and integrity.

[149] The bank is expected to comply with privacy law of all levels of government and with anti-money laundering rules. To protect itself from fraud, the bank expects that its employees will comply with such commonsense procedures relating to knowing your client. The Code and policies are put in place to protect the business interests of CIBC, its employees, and customers; to maintain CIBC's reputation for integrity; and to ensure that CIBC, through its employees, complies with applicable legal and regulatory obligations.

[150] CIBC placed trust in Ms. Pirani. She was able to carry out her employment duties without immediate direct supervision. CIBC expected that Ms. Pirani would carry out her employment duties with integrity, and that they could trust her to adhere to the bank's procedures to protect CIBC from risks, and not put the bank's reputation or client privacy at risk. Ms. Pirani was expected to be honest in her dealings with the bank, her managers and with customers.

A. Summary of Misconduct and Warnings

[151] CIBC issued the November 2010 warning letter because, for a period of two months, Pirani failed to review an overdraft report and ensure that the appropriate action was taken regarding one of her client accounts. The account was overdrawn by \$29,509.42, which was in excess of any approved limit. As noted above, Ms. Pirani did not review the overdraft reports in a timely fashion and address any overdrafts.

[152] After she returned to work following her sick leave, she testified that that her home situation was not as bad as it was in 2010, though she was financially struggling.

[153] In February 2013, CIBC issued Pirani a final written warning because, on three occasions, contrary to CIBC policy, Ms. Pirani pulled Credit Bureau records for clients without their signed consent. On cross examination, Ms. Pirani agreed that she was expected to follow CIBC's Code of Conduct and acknowledged that she was required to complete an annual online course which

included a review of the Code of Conduct. She agreed that she had to attest annually that she had reviewed it and would follow the Code of Conduct.

[154] The second warning letter was precipitated by a complaint by one of the CIBC clients that Ms. Pirani had pulled credit Bureau records without their signed consent. The February 2013 letter from the District Vice President, Venki Raman noted: “During our discussion you admitted you knew you had to get the signed consent and claimed you always do.” Ms. Pirani told them that it had only occurred once. She was confronted with a second example involving the sister of one of her coworkers. Mr. Raman indicated: “We presented you with the second example where the client’s sister is one of your coworkers in same branch. You replied the client was pushing you but also admitted you did it without consent.” At the trial, Ms. Pirani testified that she had verbal consent and claimed that she had initially told her employer that the misconduct had only occurred once before because she was nervous. As Mr. Raman concluded, Ms. Pirani’s recollection of the details of the other occasions, also demonstrated at trial, made it clear that she should have been aware of the other cases.

[155] When confronted Ms. Pirani also conceded the third incident was true. The warning letter indicates:

We ask you about the third instance regarding co-applicant and whether you pulled the credit bureau without her consent; you admitted you did. We asked you if you ever met him and you said no. He explained he talk to you on the phone, and because it was difficult to get him in person and he wanted the credit soon you chose to pull the credit without consent. Not only is this at issue but your actions also contravene the IIROC requirement to “Know Your Client”. To be clear it you are expected to meet clients face-to-face in order to witness signatures and confirm identity prior to considering business deals especially extending credit.

[156] The second warning letter went on to clearly identify the issues that Ms. Pirani had to address, outlined the risks to the bank regarding a privacy breach, addressed Ms. Pirani’s lack of forthrightness, warned her about the consequence of failing to comply with the bank’s procedures, and provided her with contacts to obtain additional assistance or professional help. The letter states:

In all instances and as such contravened CIBC’s Code of Conduct section 6.1 Protecting Confidentiality and Privacy policy which prohibits ‘any unauthorized use, collection, disclosure or access of Personal Information’. For further clarify (sic) Personal Information ‘means any data about an identifiable individual in any form including, without limitation, paper, electronic, video or voice recording. For example, contact information, account numbers, details such as age and marital status, financial information...’

Your failure to obtain signed authorization from clients to access their financial information has exposed CIBC to the risks associated with the privacy breach.

Of additional concern is your lack of forthrightness when we initially ask you about your actions. Only once we put examples in front of you did you admit your wrongdoing.

Even if you didn't remember specific client names we have concluded you would have been aware you did it more than once because when we did raise each instance you recall the details of each situation.

We have warned you previously about failing to follow CIBC's procedures. Your actions are unacceptable; you've been in this role for eight years and admitted your awareness of the requirement and their risk you've exposed CIBC to. You are expected to immediately ensure that you strictly adhere to all procedures without exception.

Ongoing reviews will be conducted to ensure that you are meeting our expectations.

In light of the previous warning to you this letter is a formal warning that your continued failure in this regard will result in termination of your employment without further notice or payment. You should be aware that this will affect your PMM rating and eligibility for any incentive payments.

Should there be any issues that you wish to discuss, or if CIBC can provide you with any additional assistance to bring about the necessary improvements, please contact me without delay.

Also, I would like to remind you that if you are in need of any personal advice, the Employee Assistance Program support line, a confidential, professional assistance program for employees and their dependents, is available for your use at.....”

[157] After receiving the warning letter, Ms. Pirani went on to commit several more serious breaches of CIBC's procedures as follows:

- i) she changed information on mortgage payout letters for a mortgage file after the client signed and without the client's knowledge;
- ii) she provided the mortgage file to her Branch Manager for review after the mortgage was funded, contrary to the bank's procedures.
- iii) On July 16, 2013, she used the same charting notes for different clients.

[158] She indicated that she was aware of the requirements of the Code and was aware that a breach of the Code could lead to the termination of her employment without notice. On cross examination, Ms. Pirani was asked whether it was her understanding that if she breached the Code if it would impact her ability to receive an annual incentive award, as well as lead to termination. The following exchange occurred during her cross examination:

Q. And, would you agree with me that if you didn't meet your performance expectations that, that might affect your ability to receive a payment under the AIP?

A. Yes.

Q. What about if you breached the Code of Conduct? Would that impact your ability to receive a payment under the AIP.

A. I will say if I breach the Code I was assuming I would be let go.

Q. Okay, so it is your understanding that if you breached the Code, your employment would likely cease, is that correct.

A. Yes.

[159] Ms. Pirani was asked what she understood the following sentence in the letter to mean: "In light of the previous warnings to you, this letter is a formal warning to you that your continued failure in this regard will result in termination of your employment without further notice or payment." She responded, that it "means that if I did oral consents again, they would terminate me."

[160] As for the previous warning, Ms. Pirani testified that she viewed the sentence "You are expected to immediately ensure that you strictly adhere to all procedures; not just limited to the review and action of the overdraft report", contained in the November 17, 2010 letter, to be a warning. The letter went on to state: "This letter is a formal warning to you that failure to improve your performance to our satisfaction will result in further disciplinary action being taken."

[161] Ms. Pirani admitted that she was obliged to complete annual courses and conceded that she did so. Based on the transcript filed at trial of her courses taken, which the parties agreed to for the truth of its contents, the annual courses covered regulatory requirements, money laundering, and the persistent theme of risk recognition, integrity, protection of privacy and authenticating a client. Ms. Pirani faithfully participated in these courses, and the following snapshot suggests that she was well versed or ought to have been on the issues raised by her managers with respect to her conduct. They include the following courses over the years:

2005	Global Reputation and Legal Risks-Basic
2008	Recognize Risks & Take Action
2008	The Basics Part 3: Act with Integrity

2008	The Basics Part 4: Manage Risks
2008 (2 nd course)	The Basics Part 3: Act with Integrity
2009	Bank Regulatory Requirements: General
2009	The Basics Part 2: Recognize Risks and Take Action
2009	The Basics Part 4: Protect Privacy and Important Information
2010	The Basics Part 2: Recognize Risks and Take Action
2010	The Basics Part 3: Act with Integrity
2010	The Basics Part 4: Protect Privacy and Important Information
2011	The Basics Part 2: Recognize Risks and Take Action
2011	The Basics Part 3: Act with Integrity
2011	The Basics Part 4: Protect Privacy and Important Information
2011	How to Authenticate Your Client
2012	The Basics: Protect Privacy and Important Information
2012	The Basics Part: Act with Integrity
2012	Know Your Client and Suitability
2012	Maintaining Mutual Fund Files
2013	Act with Integrity
2013	Protect Privacy and Information
2013	Recognize Risks & Take Action

[162] I note that Ms. Pirani has a solid educational background in financial planning and investments. She has worked in investments and her work history is steeped in the investment world.

[163] She completed the Financial Certificate in Financial Planning course in 2002. In 2004, she was hired by CIBC. In 2005, she redid the Canadian Securities course as well as the course for dealing with clients. In 2006, she completed the Wealth Management Essentials course. She completed a registered retirement course in 2008.

[164] Before joining CIBC, Ms. Pirani was with Aetna Life for seventeen years, from 1983 to 2000. At Aetna Life, Ms. Pirani was an investment securities analyst. She started out as a part-time securities clerk in the investment department, and three years later was promoted to full time analyst. She next worked at the Investors Group, where she worked as an investment consultant, before being hired at CIBC in December 2004. At Investors Group, she completed some life insurance courses. By her own admission, she was specialized in the investment industry.

III. Was dismissal a proportional response?

[165] CIBC has established, on a balance of probabilities, that dismissal was a proportional response to the cumulative, persistent, and continued breaches of the Code (and her employment agreement) in the circumstances. Ms. Pirani had ample warnings and opportunities to correct her behaviour but chose not to do so. She received coaching after privacy breaches. She was encouraged by Ms. Wahabi to take a course on lending but refused to do so. She received two

written warnings, with a notification that she would be terminated if she failed to adhere to the final one. She was given express and clear warnings about complying with the Code and procedures. She had ample opportunity to improve after the first two written warnings, but chose not to modify her behaviour by adhering to the Code. She acknowledged that at the time of the February 13, 2013 warning letter, she had been warned previously about following CIBC's policy and procedures.

[166] A relationship of trust is of particular importance in the banking industry. Employees in the banking industry are held to a higher standard of trust, honesty and integrity than employees in other commercial or industrial undertakings: *Ennis v. Canadian Imperial Bank of Commerce* (1986), 13 C.C.E.L. 25 (B.C.S.C.); *Steel v. Coast Capital Savings Credit Union*, 2013 BCSC 527.

[167] Ms. Pirani's employment agreement incorporates the requirement for trust, honesty and integrity. A bank employer is therefore entitled to expect that its employees will act in accordance with its policies with the utmost honesty and integrity. Breach of this trust and confidence by the employee justifies termination for cause without notice: *National Bank v. Lepire*, 2004 FC 1555, at paras. 13, 21, 26; *Fletcher v. BNS*, 2000 BCSC 694, at paras. 12-13; *Ennis*; *Deschênes v. Canadian Imperial Bank of Commerce*, 2009 FC 799, at paras. 36-37, aff'd 2011 FCA 216; *Bank of Nova Scotia v. Randhawa*, 2018 FC 487, at paras. 32-33.

[168] In *Vallières v. Royal Bank of Canada*, 2020 FC 957, at paras. 14-15, the court noted:

In several decisions subsequent to *McKinley*, this Court has recognized that the trust between employer and employee in the banking sector is of capital importance and that the breach of that trust may be sufficient to justify a dismissal. [Citations omitted.]

This means that the principle of progressive discipline is a weak constraint on the administrative decision-maker, who can reject it in favour of other considerations: [Citations omitted]. The same can be said for proportionality of the sanction, as raised by Mr. Vallières. In this case, the adjudicator decided to set aside the application of the principle of progressive discipline after engaging in a contextual analysis that took into consideration the facts before him.

[169] In this case, there was progressive discipline. Both of Ms. Pirani's former branch managers, Mr. Lou and Ms. Wahabi, gave evidence on the importance of the CIBC's policies and procedures in protecting customers and the bank from risk. It was not up to Ms. Pirani to pick and chose or bypass those procedures. At the trial, her explanations, excuses and attempts to minimize the significance of her contraventions underscored her lack of judgment and lack of appreciation of the important role these policies played in ensuring that employees also complied with regulatory and other requirements. She repeatedly exposed CIBC to complaints of privacy breaches, potential fraud (by processing a credit application without ever meeting the client) and reputational and other risks. The policies were common sense policies designed to protect the CIBC and to protect

client privacy (e.g., regarding credit bureau checks), as well as policies and procedures designed to ensure that all CIBC client financial management was truthful and accurate.

[170] As both Mr. Lou and Ms. Wahabi testified, CIBC policies and procedures are in place in order to protect the bank and its clients from risk. Ms. Pirani repeatedly bypassed those policies and procedures. The numerous breaches by Ms. Pirani are a testament to the fact that she had, by all accounts, abdicated her employment duties. She routinely pulled clients' credit bureau records without signed consent, delegated (by her evidence) the responsibility to review overdraft reports to her assistant, processed credit applications without ever meeting the client, changed client information on mortgage payout statements without the client's knowledge, used the exact same charting notes for clients of moderate risk, and, by her own admission, lied to a client in order to obtain their signature on a document.

[171] Ms. Pirani's misconduct was serious, involved a blatant disregard for policies and procedures, exposed CIBC to monetary and reputational loss, and led to an irreparable breakdown of the employment relationship.

[172] In *Matheson v. Matheson International Trucks Ltd.*, [1984] O.J. No. 306 (H.C.J.), the Ontario High Court of Justice adopted the following description of cumulative just cause:

It is not always easy for an employer who finds an employee thoroughly unsatisfactory and deficient in obedience or competence to point to a single instance which would justify his summary dismissal. But I do not think it is necessary to rely upon such a single instance where the employee's conduct shows a general laxity and disregard of instructions in a business requiring energy, accuracy of accounts, and strict adherence to instructions, such as this business required.

[173] Ms. Pirani's repeated contravention of the Code was a violation of her employment agreement. I am satisfied, on the balance of probabilities, that the cumulative breaches of the Code coupled with Ms. Pirani's continued and persistent breaches of CIBC's policies signaled that she had no intention to follow the bank's policies and procedures, and therefore, the bank's response in dismissing her was proportionate in the circumstances. The breakdown in the employment relationship was beyond repair. The admission made by Ms. Pirani during her testimony that she did not disclose to a client that an account had been opened in her name (she testified in chief that opening a bank account without the client knowing was fraud and against the Code), and then concocting a ruse to get the client's signature, merely highlights that she did not embrace the trust and honesty principles in her Employment Agreement.

XII. Are damages limited to the termination provision in the employment

[174] Given my conclusion that CIBC had cause to terminate Ms. Pirani, I need not determine this issue, but will do so nonetheless.

[175] CIBC submits that if there was no cause to terminate Ms. Pirani’s employment, then her entitlement is governed by an enforceable termination provision that would limit her rights on termination to the minimums as contemplated by the Employment Agreement. CIBC submits that if the termination clause is enforceable, Ms. Pirani is entitled to two (2) weeks pay in lieu of notice per completed year of service, or 16 weeks’ pay in lieu of notice, for a total of \$16,923.04.

[176] Ms. Pirani argued at trial that the employment agreement was repudiated when she was dismissed for cause and, in the result, the CIBC cannot rely on the termination provision. Ms. Pirani does not plead repudiation in her statement of claim. Ms. Pirani bears the onus of establishing that the employment agreement was repudiated: *Humphrey v. Mene*, 2021 ONSC 2539, at para. 116. An employer’s failure to establish just cause does not disentitle an employer from enforcing an otherwise valid without cause termination provision: *Humphrey*, at para. 135.

[177] Ms. Pirani has not established, on a balance of probabilities, that CIBC repudiated the contract.

[178] As for whether the termination provision is enforceable, CIBC focuses on the provision addressing without cause termination. In my view, the with cause termination provision should also be examined. The provisions read:

Termination of Employment

With Cause - CIBC may terminate your employment without notice or pay in lieu of notice, for cause. Cause includes, but is not limited to, dishonesty, failure to perform your duties in a satisfactory manner or a material breach of the terms and conditions of your employment, including any applicable Code(s) of Conduct.

Without Cause - CIBC may also terminate your employment without cause. If this occurs during a probationary period as outlined in your offer letter, you will only be entitled to whatever notice or severance, if any, as may be required by applicable employment standards legislation. After your probationary period, in the event you are terminated without cause, your severance entitlement is limited to two weeks of notice, or pay in lieu thereof, for each completed year of service, subject to a minimum three weeks and a maximum of eighteen months. In no event will your severance entitlement be less than that provided by the applicable employment standards.

[179] The plaintiff relies on the ESA. The ESA sets out the minimum employment standards that employers must meet under ss. 1(1), 5(1) and 57. Sections 54 and 55 of the ESA mandate that notice and termination pay must be given for all terminations, even those for just cause, except for “prescribed employees”: *Rahman v. Cannon Design Architecture Inc.*, 2022 ONCA 451, at para. 27. As noted by Gillese J.A. in *Rahman*, at para. 28, ESA notice and severance have been awarded in circumstances where the employer had cause to terminate the employee.

[180] Section 2(1) of the O. Reg. 288/01 under the ESA sets out employees who are not entitled to notice of termination or termination pay under the ESA. Clause 3 of s. 2(1) includes in this list “an employee who has been guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer.” Section 9(1) of the Regulation sets out employees who are not entitled to severance pay under the ESA. Clause 6 of s. 9(1) mirrors the language in clause 3 of subsection 2(1), and, in the result, an employer is not obliged to pay severance under the ESA where the employee “has been guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer.”

[181] In this case, CIBC’s “With Cause” termination clause appears to displace the statutory and requirement to pay severance even to employees terminated for cause, and the clause does not expressly state that the “no notice or pay in lieu of notice” is limited to employees who come within the exception under the regulation. For the reasons below, I doubt the ESA applies to Ms. Pirani.

[182] A termination provision that does not comply with the ESA in any respect is void and cannot be relied upon for any purposes: *Rahman*, at para. 30. If any provision in an employment contract related to termination does not comply with the ESA, all provisions with respect to termination are null and void. Even if only a portion of a termination provision conflicts with the ESA, it is still not open to the Court to simply strike out an offending provision. Rather, the offending portion “taints the entirety of the termination provisions”: *Gracias v. Dr. David Walt Dentistry*, 2022 ONSC 2967, at para. 94; *Rossmann v. Canadian Solar Inc.*, 2019 ONCA 992, 444 D.L.R. (4th) 131, at para. 18; *Pavlov v. The New Zealand and Australian Lamb Company Limited*, 2021 ONSC 7362, at para. 14.

[183] However, although Ms. Pirani relies on the ESA in her pleading, I doubt whether the ESA would apply to her. Section 3(2) of the ESA reads: “This Act does not apply with respect to an employee and his or her employer if their employment relationship is within the legislative jurisdiction of the Parliament of Canada.” See also, *Brown v. Canadian Imperial Bank of Commerce*, 2014 ONCA 677, at para. 12, wherein Doherty J.A. commented:

The respondent, CIBC, is a Canadian federally-chartered bank. Its labour relations are governed by the Canada Labour Code, R.S.C. 1985, c. L-2 (“Code”). The respondent, CIBCWM, is the wholesale banking arm of CIBC. It provides investment advice and services to individual clients through its retail division, CIBC Wood Gundy. There are about 40 Wood Gundy branches in Ontario. CIBCWM is provincially incorporated and its labour relations are governed by the Employment Standards Act, 2000, S.O. 2000, c. 41 (“ESA”).

[184] There are no equivalent provisions to the ESA under Part III of the *Canada Labour Code*, RSC, 1985, c. L-2 (“CLC”). Section 230(1) of the CLC governs termination without cause. Section 231 of the CLC applies where notice is given by an employer pursuant to s. 230(1) of the CLC, i.e., an employee terminated without cause. Pursuant to s. 235 of the CLC, an employer is not obliged to pay severance where an employee is dismissed for “just cause”. The Employment

Agreement speaks to termination without pay “for cause” or “with cause”. While there is no equivalent provision in the CLC, although the court has found that the term “for cause” in a termination provision incorporate the common law concept of “just cause”: see, *Lamontagne v. J.L. Richards & Associates Limited*, 2021 ONSC 8049 (Div. Ct.), at para. 15 and 19. In *Render v. ThyssenKrupp Elevator (Canada) Limited*, 2022 ONCA 310, the Ontario Court of Appeal stated:” The law on the interpretation of the prohibition section has been consistently stated to require more than what is required for just cause for dismissal at common law”, however, at issue was the terminated employee’s entitlement under the ESA.

[185] First, the parties did not address the interpretation of the language in the Employment Agreement relative to the language in the CLC. Second, the parties did not address with the CLC would be applicable in the circumstances where the CIBC was relying on its right to terminate Ms. Pirani under the Employment Agreement.

[186] As counsel for the parties did not make submissions on these points, and given my findings, I need not address whether the clause is unenforceable for non-compliance with the Canada Labour Code.

XIII. Quantum of damages had the court concluded CIBC had no cause

[187] While I find that the defendant had cause to dismiss the plaintiff, I will nonetheless address the issue of damages, had the plaintiff succeeded in establishing no cause.

[188] Ms. Pirani’s annual base salary was \$55,000. She also participated in benefits plans that included coverage for medical, dental, life insurance, accidental death and dismemberment, and long-term disability.

[189] I find there would have been no basis to award any other damages other than damages for pay in lieu of reasonable notice and for benefits during the notice period, for the following reasons.

i. Mitigation

[190] The defendant, CIBC, conceded that there is no issue with respect to mitigation. Ms. Pirani testified that she subsequently found other employment, but she claimed her employer found out that she had been terminated and the reason for her termination and offered her the choice of either quitting or being terminated. She worked for this employer, Global Maxfin Financial, for about two weeks in January of 2014 before resigning from her employment. She next worked at Scarborough General Hospital from May of 2014 until January of 2015. In May 2016, she obtained her Real Estate License and has been working as a Real Estate Agent since then.

ii. Damages for pay in lieu of notice

[191] Assuming CIBC is not able to rely on the termination clause in Ms. Pirani’s employment agreement, her damages are calculated at common law. At common law, an employee is entitled to reasonable notice of termination or pay in lieu thereof. The reasonable notice period is calculated

by balancing the factors outlined in *Bardal v. Globe and Mail Ltd*, [1960] 24 D.L.R. (2d) 140 (Ont. S.C.):

- a) the character of employment;
- b) the length of employment;
- c) the age of the employee at termination; and
- d) the availability of similar employment having regard to the experience, training and qualifications of the employee.

[192] Ms. Pirani's sought 48 months in her statement of claim and 24 months at the trial. Her position is not supported by the case law. At the time of termination, Ms. Pirani's annual base salary was \$55,000. She also participated in a benefits plans that included coverage for medical, dental, life insurance, accidental death and dismemberment, and long term disability.

[193] Based on the *Bardal* factors and relevant case law, CIBC submits that Ms. Pirani's entitlement to common law reasonable notice would therefore be in the range of seven (7) to nine (9) months.

[194] At the time of her termination, Pirani held the position of Senior Financial Services Representative, was around 58 years old, and had been employed by CIBC for approximately 8.5 years. I prefer the cases relied upon by CIBC which are similar to the case before me and are summarized in the following chart:

Case	Position	Age	Service	Notice Awarded
Naçu v. Watmec Ltd. ⁱ	Salesperson	61	8 years	6 months
Bray v. Bank of Nova Scotia ⁱⁱ	Business Systems Analyst	n/a	7 years	7 months
Colwell v. Cornerstone Properties Inc. ⁱⁱⁱ	Commercial Manager	n/a	7 years	7 months
Upcott v. Savaria Concord Lifts Inc. ^{iv}	Production/Planning Manager	65	8 years	7.5 months
Borges v. Midland food Products Inc. ^v	Sales Representative	50	9.5 years	7.5 months
Trites v. Renin Corp. ^{vi}	Controller	53	7.5 years	7.6 months

Commodaro v. Shelmac Brand Products Inc. ^{vii}	Labourer	62	7.5 years	8 months
Elg v. Stirling Doors ^{viii}	Factory Worker	54	9.5 years	8 months
Belton v. Liberty Insurance Co. of Canada ^{ix}	Insurance Agent	50	8 years	9 months
Yiu v. Canac Kitchens Ltd. ^x	Team Leader, Customer Service	37	11 years	9 months
Barrie v. Voith Canada Inc. ^{xi}	Sales Representative	45	11.5 years	9 months
Leeming v. IBM Canada Ltd. ^{xii}	Senior Managing Consultant	60	8 years	10 months
Patterson v. Lee Munro Chevrolet Ltd. ^{xiii}	Service Manager	n/a	11.5 years	11.5 months
Klimczewski v. Nytric Ltd. ^{xiv}	Senior Software Engineer	61	10.5 years	12 months
Thomas v. EDS Canada Inc. ^{xv}	Sales	53	9.5 years	12 months

[195] Based on the *Bardal* factors, in my view, nine months would have been appropriate given Ms. Pirani's age at the time of termination (58 years); her position at termination (Senior Financial Advisor/Financial Service Representative); the length of service (8.7 years); and the availability of employment compatible with her skills and abilities, less any amounts for mitigation. Ms. Pirani did find another job shortly after her termination, then resigned from her position after two weeks, because her employer became aware of the OSC matter.

[196] While Ms. Pirani complains that she was not able to secure similar employment because of CIBC's reporting to the OSC, there is little evidence to show a causal link between the reporting and her inability to secure similar employment. Given the nature of the banking industry and the fact that mutual fund dealers are regulated, this reporting must have been in the reasonable contemplation of the parties when the contract was entered into.

[197] In the result, had CIBC not had cause to terminate, I would have awarded damages for reasonable notice in the amount of \$41,249.97, to be reduced by any amount on account of income received during the same time frame for mitigation.

iii. AIP Award/Bonus

[198] Ms. Pirani was eligible to participate in CIBC’s incentive program pursuant to her employment contract and the governing plan. The governing plan is the Annual Incentive Plan (“AIP”), which formed part of Ms. Pirani’s employment contract. The AIP award was discretionary. Ms. Pirani acknowledged the bonus was discretionary and based on her performance and that of her branch. The parties agree that in 2012, Ms. Pirani received an AIP award of \$2,000 but did not receive any AIP in 2013. The bonus being discretionary, if no cause for dismissal had been established, Ms. Pirani has not established, on a balance of probabilities, that she would have received an AIP award during the (notional) notice period.

[199] I would have dismissed this aspect of the claim, had there been no cause for dismissal.

iv. Benefits

[200] Neither party has provided any evidence with respect to the value of Ms. Pirani’s benefits. Counsel for CIBC submits that if the court were to find there was no cause for dismissal, Ms. Pirani is entitled to 10% of her salary (\$55,000) to compensate her for benefits during the notice period. The jurisprudence establishes that a valuation at 10% of base salary for this claim may be appropriate: *Groves v. UTS Consultants Inc.*, 2019 ONSC 5605, at para. 96, aff’d 2020 ONCA 630.

[201] I would therefore have awarded the plaintiff 10% of her salary during the nine months notice period, or \$4,124.97. The plaintiff would have been entitled to prejudgment interest in accordance with the *Courts of Justice Act*.

v. Pension Loss

[202] Ms. Pirani has not tendered any evidence to establish the value of her pension loss during the period of notice, or at any time. Ms. Pirani bears the onus of quantifying this head of damages: *Milwid v. IBM Canada Ltd.*, 2023 ONSC 490. Having failed to do so, she would not be entitled to these damages: *Ault v. Canada (Attorney General)*, 2011 ONCA 147.

[203] I would have dismissed this aspect of the claim, had there been no cause for dismissal.

vi. Moral damages

[204] In *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, at paras. 95 and 98, the Supreme Court of Canada held employers “to an obligation of good faith and fair dealing in the manner of dismissal” and created the expectation that, in the course of dismissal, employers would be “candid, reasonable, honest and forthright with their employees”. Therefore, in certain circumstances, the court may award damages for an employer’s misconduct in the course of an employee’s dismissal where the employer has engaged in conduct that is “unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive”: *Lin v. Ontario Teachers’ Pension Plan*, 2016 ONCA 619, at para. 48; *Wallace*, at para. 98; *Honda Canada Inc. v. Keays*,

2008 SCC 39, [2008] 2 S.C.R. 362, at paras. 57 and 59. On the evidence in this case, I am not satisfied that CIBC's conduct when it dismissed Ms. Pirani rose to such a level as would justify damages for CIBC's conduct. While she was shocked to receive the termination, the letter was given to Ms. Pirani at a meeting, and not in a public place.

[205] Therefore, I am not satisfied, on the evidence, that CIBC's conduct caused Ms. Pirani any psychological injury, a factor which is required to ground a claim for moral damages: *Keays*, at para. 56; *Groves v. UTS Consultants Inc.*, 2019 ONSC 5605, at para. 112, aff'd 2020 ONCA 630. In *Keays*, the Supreme Court of Canada noted that at the time of the contract of employment "there would not ordinarily be contemplation of psychological damage resulting from the dismissal since the dismissal is a clear legal possibility. The normal distress and hurt feelings resulting from dismissal are not compensable": at para. 56.

[206] I also note that some external evidence of mental distress is typically required to make out a successful claim: *Lau v. Royal Bank of Canada*, 2017 BCCA 253, 415 D.L.R. (4th) 166, at paras. 45-47; *Morison v. Ergo-Industrial Seating Systems Inc.*, 2016 ONSC 6725; *Cottrill v. Utopia Day Spas and Salons Ltd.*, 2018 BCCA 383, 427 D.L.R. (4th) 39, leave to appeal to SCC dismissed, [2018] S.C.C.A. No. 533.

[207] I would have dismissed this aspect of the claim, had there been no cause for dismissal.

vii. Mental Distress

[208] For the reasons below, the claim for mental distress should be dismissed.

[209] Damages for mental distress are limited to damages that flow from the manner of termination rather than the fact of termination, and that were foreseeable or contemplated by the parties: *Keays*, at para. 59. They are only available where an employer engages in conduct in terminating the employee that is unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive. Though medical documentation is not a requirement, courts have refused to award mental distress damages where the plaintiff fails to present medical evidence to substantiate a claim of mental suffering: *Whiten v. Pilot Insurance Co.*, [2002] 1 S.C.R. 595, at para. 92; *Fidler v. Sun Life*, [2006] 2 S.C.R. 3, at para. 62.

[210] In this case, Ms. Pirani was invited to a place off site. The meeting was held behind closed doors to discuss her termination. A counsellor was made available to her if she wanted to speak to the person. As for CIBC's report to the CIBC Securities Inc., discussed further below, the parties have agreed that CIBC's investment arm was required to notify the OSC. This was in the contemplation of the parties. Courts have declined to award such extra-contractual damages where the employer is required to report the termination of a licensed employee to the applicable regulatory authority: *Pavlis v. HSBC Bank Canada*, 2009 BCSC 498. And, though not required, there is no medical evidence to support Ms. Pirani's claim that she suffered mental distress, aside from the usual upset caused by the termination.

[211] I would therefore have dismissed this claim for damages for mental distress, had there been no cause for dismissal.

viii. Punitive damages

[212] As for the claim for punitive damages, I do not find, on the evidence, that the CIBC engaged wrongful acts that were so malicious and outrageous that they are deserving of punishment on their own.

[213] I would have dismissed the claim for punitive damages, had there been no cause for dismissal.

ix. Aggravated, exemplary damages

[214] I would dismiss the claim for aggravated and exemplary damages, had there been no cause for dismissal. Aggravated damages: (a) are only awarded to take into account the additional harm caused by reprehensible or outrageous conduct on the part of the defendant; and (b) only arise out of a separate cause of action, and not out of a contractual breach: *Fidler*, at para. 52. There was nothing in the conduct of CIBC, at the time of Ms. Pirani's termination, that was reprehensible, outrageous, or egregious thereby justifying such an award.

XIV. The Reporting to the Ontario Securities Commission

[215] Ms. Pirani says that that CIBC improperly reported inaccurate allegations about her to the Ontario Securities Commission ("OSC") after her termination.

[216] At paragraph 7 of her statement of claim, Ms. Pirani pleads as follows:

As a Financial Advisor, she was required to hold an Investment Industry Regulatory Organization of Canada ("IIROC") licence. Financial Advisors can lose their IIROC licence if they stop working as a Financial Advisor for a period of three years.

[217] CIBC's investment arm, CIBC Securities Inc., is the entity registered with the OSC as an investment dealer pursuant to the *Securities Act*, R.S.O. 1990, c. S. 5. CIBC Securities Inc. is required by National Instrument 33-109 to, among other things, notify the OSC of the end of a sponsored individual's employment with the firm by submitting a Form 33-109F1. This is a regulatory obligation imposed by the OSC.

[218] The Form 33-109F1 submitted to the OSC indicated Ms. Pirani's effective date of termination as July 25, 2013 and provided the following reasons:

CIBC securities Inc. was informed that said individual was dismissed at CIBC (the bank) therefore it is CIBC securities Inc. policy that said individual must deregister. CIBC securities Inc. has no custody, possession or control of

documents nor information regarding this dismissal with the exception of what CIBC (the bank).

CIBC (the bank) has advised CIBC securities Inc. that said individual was terminated for breach of the CIBC's Code of Conduct, section 2.3 Acting Within our Scope of Authority and 6.5 Maintaining Records. Specifically, this individual repeatedly failed to properly file documentation and failed to follow information security policies.

XV. Was Ms. Pirani Demoted?

[219] The pleadings mention that Ms. Pirani was demoted, but she has not claimed that she was constructively dismissed. For the sake of completeness, I will address the issue.

[220] Ms. Pirani says that she returned to the same branch part-time, on modified duties, after her sick leave. She claimed that she eventually approached Mr. Lou to advise him that she felt ready to return to the Financial Advisor role and was told that he did not have anything for her. She went to another branch, managed by Ms. Wahabi, to fill a sick leave position, and ultimately accepted a position there as a Financial Services Representative. According to Ms. Pirani, she learned that her old portfolio became available at her original branch and when she approached Mr. Lou to return to her position, he told her he had someone else in mind. Mr. Lou, on the other hand, claimed s that Ms. Pirani effectively stopped reporting to him after she went on sick leave; she did not want to return to the branch because of how it would look to her clients. He testified that she never lost her job.

[221] Ms. Pirani indicated that she felt she had no alternative. She conceded that no one at CIBC told her she had to accept the role as a Financial Services Representative. She assumed, based on Mr. Lou asking her in February 2012 what her plans were, whether she was signing the Financial Services Representative agreement, and letting her know that she needed to let HR know, that she might be losing her job. She conceded, on cross examination, that it is possible that the reference could have meant that she needed to let HR know whether she was accepting the Financial Services Representative job or not. She admitted on cross examination that after she accepted this position, she did not ask to be removed from this position at any point.

[222] I am satisfied, on the evidence, that Ms. Pirani was not demoted but rather, after some consideration on her own, accepted the position as a Senior Financial Services Representative in 2013.

XVI. Adverse inference

[223] Ms. Pirani urges the court make an adverse inference against CIBC based on the fact that neither her former assistant, nor Mr. Raman, nor any others were called by CIBC to testify. I decline to do so. It is Ms. Pirani who attempted, at the trial, to shift the blame to her former assistant. There is no explanation as to why either side could not have called her, but given my finding above, her evidence was not necessary.

[224] As for Mr. Raman, I disagree that his evidence was necessary to address the year end opening of accounts. Ms. Pirani acknowledged accounts were opened without the knowledge of CIBC clients, and given Ms. Pirani's testimony above, and my finding of facts, Mr. Raman was not a necessary witness. There are other witnesses that Ms. Pirani contends were important, including those who met with her when she was terminated. For the reasons above, I decline to make any adverse inference as I am satisfied, on the evidence, that CIBC has met its onus of establishing cause for dismissal.

XVII. Conclusion

[225] For the reasons above, I am satisfied that CIBC has established, on a balance of probabilities, that Ms. Pirani's actions constituted misconduct amounting to just cause for dismissal.

[226] For the reasons above, I am satisfied that the evidence establishes, on a balance of probabilities, that Ms. Pirani breached CIBC's Code and procedures, both before and after the two written warnings. As stated above, the Employment Agreement and the Code require employees to be familiar with and abide by the policies that apply to their day-to-day duties.

[227] I find that Ms. Pirani was aware of CIBC's policies, rules and procedures. The rules were reasonable and designed to protect the privacy of the bank's customers, in compliance with the requisite law or the record keeping requirements of mutual fund dealers. Ms. Pirani was well aware of the consequences of a breach of the policies and rules, by her own admission, after the second warning letter. Despite this, she intentionally and deliberately continued to circumvent the Code, policies and procedures, in breach of the terms of her employment agreement. She continued to put the bank at risk, even in purportedly remedying what she herself called a fraud and breach of the Code of Conduct, with respect to the opening of bank accounts without the client's knowledge. She was dishonest. She misled the client.

[228] Ms. Pirani was aware of the Code and the bank's procedures and was obliged to take annual courses. She acknowledged she was aware of the bank's procedures. They were clear and unequivocal, and she had the opportunity to ask questions of her manager if necessary. She was also coached, encouraged to take courses which may assist her, and made aware of resources that could help bring about her necessary improvement.

[229] The Code and the policies are part of Ms. Pirani's employment agreement. I find that, on a balance of probabilities, Ms. Pirani's continued refusal to adhere to CIBC's procedures gave rise to a breakdown in the employment relationship and violated essential terms of her employment agreement. While CIBC's policies mandated that an employee should not skip a step, Ms. Pirani presented scenarios where it would be okay to skip steps, for example, if she was too busy.

[230] Given the highly regulated nature of the banking industry, and the real risks to the bank, both reputationally and financially, the policies were clear, commonsensical, in accordance with the bank's statutory and regulatory obligations, and rationally connected to the bank's ability to

carry out its business. Ms. Pirani's refusal to adhere to CIBC's policies was inconsistent with her employment obligations.

[231] I have considered, in balancing the proportionality of CIBC's response, the fact that Ms. Pirani had to manage a tragic family situation in 2010 with the death of her son in law. By her own admission, that had settled down after she returned from sick leave, aside from continued financial stressors. And, while I recognize the significance of her job to her sense of self-worth and identity, this must be counterbalanced with the fact that she continually placed CIBC at risk of allegations of privacy breaches, fraud, and financial and reputational loss by not adhering to the bank's procedures, all of which is inconsistent with her obligations to the CIBC. I do not accept that all of the infractions raised by the employer would rise to the level of "serious", such as the attendance issues. And the issue with respect to the charting notes in and of itself, though serious, was capable of being corrected. However, the charting notes incident is just one example of Ms. Pirani's refusal to follow the proper process, even when regulated. She was licensed to buy mutual funds, but she was required to maintain accurate records. Even at the trial, she refused to take responsibility for the fact that she used the same charting notes for clients, and only offered excuses. It is this lack of insight and judgment which raises the issue of the charting notes to the level of really serious. She continued to maintain, though the Code indicated otherwise, that it was okay to skip a step if one was busy. There is no evidence that this was common practice at CIBC.

[232] I would add that Ms. Pirani's admission that she lied to a client to obtain their signature on papers after an account was fraudulently (by her own admission) opened in their name, in breach of the Code (by her own admission), underscored that despite the training, coaching, warnings, and more, there would be no course correction. Her continued breach of the Code and policies regarding integrity and not misleading clients demonstrated a deliberate and intentional defiance of her employment duties and obligations. Ms. Pirani had been subject to progressive discipline, coaching, and warnings, including the final warning letter putting her on notice that continued failure to comply with CIBC's procedures may lead to termination of her employment without notice or pay. Her refusal to adhere to the Code, policies and procedures was contrary to the terms of her employment agreement and incompatible with her employment responsibilities.

[233] I find that CIBC took adherence to the Code and procedures seriously. There is no evidence, save Ms. Pirani's statements, that there was any practice of non-adherence to CIBC's policies and procedures by other employees. There is no evidence that Ms. Pirani was singled out or targeted while others were free to ignore the bank's Code and procedures. On the evidence, CIBC sought to ensure that its policies were being followed. The fact that Ms. Pirani's own colleagues also reported her breaches of the policies in failing to obtain clients' consent belies her argument that she was being singled out by management. While Ms. Pirani points to a letter disseminated to the group reinforcing the procedure for obtaining client's consents and SIN numbers to access credit bureau records, and the appropriate forms to be used, this was done on the heels of CIBC learning of Ms. Pirani's own failure to comply with the bank's procedures. Ms. Pirani's own admission after she was confronted by her superior that she was aware that a signed consent was required, and the fact that she herself admitted at the trial that one of her co-workers reported her (as required by the Code in my view) for failing to obtain a signed consent before

pulling one of her client's credit bureau profiles, all point to CIBC's zero tolerance for what was, in my view, a most serious breach.

[234] I find that CIBC consistently enforced the expectation that all employees adhere to the Code and its procedures, which were part and parcel of their employment agreement.

[235] Ms. Pirani focused on the fact that CIBC did not suffer any loss, which was translated to financial loss. Given the nature of Ms. Pirani's contravention, I am satisfied that CIBC need not suffer actual financial loss. The fact that she accessed clients' credit bureau information without their signed consent, and that clients complained about this practice, clearly shows that the bank was exposed to a significant risk of allegations of privacy breaches.

[236] Ms. Pirani's contravention of the Code was not isolated. Although the breaches emerged in 2010, based on her own evidence, her contravention of the Code was occurring well before that. Shortly after she was terminated, CIBC discovered further incidents of non-compliance. I agree with CIBC's position that these are common sense expectations for a senior employee in the highly regulated financial services industry. I would go even further and state that these are common sense expectations for any employee working for the bank, given the nature of the banking industry and the regulatory compliance imposed upon the bank industry.

[237] Trust, integrity, and honesty are inherently required for Ms. Pirani to carry out her employment duties. I find that she was warned verbally and twice in writing, and was well aware of the consequences (the Code and her employment agreement specifically set out the consequence) of failing to carry out her job duties in accordance with the bank's procedures. Having failed to do so, and continuing on to commit further breaches, I find that dismissal was a proportional response.

[238] Ms. Pirani's action is therefore dismissed, for the reasons stated above.

XVIII. Costs

[239] If the parties are not able to agree on costs, I will consider written submissions based on the following schedule:

- i. the defendant, CIBC, shall deliver costs submissions, including a Bill of Costs, Costs Outline, and dockets (or computer-generated dockets) no later than 30 days of the date of these Reasons;
- ii. The plaintiff, Ms. Pirani, shall deliver her responding submissions and supporting materials within 20 days thereafter;
- iii. Reply submissions, if necessary, on behalf of the defendant, shall be delivered no later than five days thereafter;

- iv. The Costs submissions, excluding the Costs Outline, Bill of Costs and any supporting case law, must be no longer than 5 pages, double spaced;
- v. Any authority referred to may be hyperlinked to a free online source for decisions;
- vi. The Costs Submissions should also be provided in Word format and emailed to Ms. Diamante. All submissions and supporting materials on Costs must also be uploaded to Caselines to the Trial bundle.



A.P. Ramsay J.

Released: November 6, 2023

CITATION: Pirani v. CIBC, 2023 ONSC 5991

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

NASEEM PIRANI

Plaintiff

– and –

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant

REASONS FOR JUDGMENT

A.P. Ramsay J.

Released: November 6, 2023

ⁱ Naçu v. Watmec Ltd. [2003] O.J. No. 3102

ⁱⁱ Bray v. Bank of Nova Scotia, [2007] C.L.A.D. No. 128

ⁱⁱⁱ Colwell v. Cornerstone Properties Inc., 2008 CanLII 66139 (ON SC)

^{iv} Upcott v. Savaria Concord Lifts Inc., 2009 CanLII 41348 (ON SC)

^v Borges v Midland Food Products Inc, 2014 CanLII 41037 (ON SCSM)

^{vi} Trites v. Renin Corp, 2013 ONSC 2715

^{vii} Commodaro v. Shelmac Brand Products Inc., 2011

^{viii} Elg v. Stirling Doors, 2002 CarswellOnt 2574, 115 A.C.W.S. (3d) 632

^{ix} Belton v. Liberty Insurance Co. of Canada, 2002 CanLII 15458 (ON SC), rev'd on other ground 2004 CanLII 6668 (ON CA)

^x Yiu v. Canac Kitchens Ltd. (Kohler Ltd.), 2009 CanLII 9412 (ON SC)

^{xi} Barrie v. Voith Canada Inc., 2004 BCSC 1728

^{xii} Leeming v. IBM Canada Ltd., 2015 ONSC 1447

^{xiii} Patterson v. Lee Munro Chevrolet Ltd., 2009 CanLII 23113 (ON SC)

^{xiv} Klimczewski v. Nytric Ltd., 2019 ONSC 1322

^{xv} Thomas v. EDS Canada Inc., 2011 ONSC 7534