J.R

T-275-23

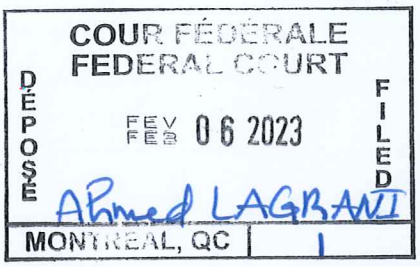
FEDERAL COURT

Id: #1

BETWEEN: **GEORGE KOURIDAKIS**

Applicant

and



CANADIAN IMPERIAL BANK OF COMMERCE

Respondent

NOTICE OF APPLICATION

(Rule 301 of *Federal Court Rules, 1998)*

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard in the City of Montreal, Province of Quebec.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Court Rules, 1998* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Court Rules, 1998,* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

FEB 10 2023

MONTREAL, February 10, 2023

AHMED LAGRAN.
AGENT DU GREFFE
REGISTRY OFFICER

Issued by: _____

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APPLICATION

This is an application for judicial review in respect of a decision, HRSDC file YM2707-10803, rendered by Adjudicator Me Mark Abramowitz, which decision was communicated to the applicant, on January 11, 2023. The decision condemns the respondent bank to pay unto the applicant a total sum of $43,200.00 "in satisfaction of all claims arising out of the termination of his employment, on June 14, 2016". This decision is from Me Mark Abramowitz (hereafter "**the Adjudicator**"), who acted as Adjudicator according to *Division XIV, Part III of the Canada Labour Code, R.S.C., 1985, c.L-2.*

This applicant makes an application for setting aside this decision (hereafter "**the Decision**") from the Adjudicator (as regards the conclusions with respect to "quantum" as said conclusions don't make whole the damages sustained by the applicant) and referring back the file/matter to a new adjudicator for determination in accordance with directions from this Honourable Court and/or referring this matter to the Honourable Court for determination.

The grounds for the application are as follows:

(i) **The Adjudicator's findings are manifestly erroneous, do not flow from the evidence, nor are they consistent with the law and/or the interpretation of Section 240 of the Canada Labour Code.**

The Adjudicator ordered the employer to pay an indemnity, for the termination of applicant's employment, in the amount of $36,000.00.

At paragraph 20 of the Decision, the Adjudicator asserts that the applicant originally asked for compensation of one month's salary for each of his fifteen (15) years of employment, but now the applicant is asking for all loss of total salary. With great respect, the Adjudicator is gravely mistaken. Respondent knows this to be false, as well. The fact is that the applicant sought a) an indemnity for loss of salary and b) damages for loss of employment, as he was not reinstated.

The observation made by the Adjudicator confirms that the Tribunal simply and grossly misinterpreted the applicant's claim/s.

It is difficult to comprehend the Adjudicator's observation considering the fact that he was duly informed, in writing, of the applicant's demands before the hearing and during the hearing.

Applicant filed a complaint under Section 240 of the Canada Labour (hereafter "**the Code**") and claimed the remedies prescribed by Section 242 4) (a) and (c) of the Code. The Adjudicator, however, neglected to apply Section 242 4) (a) and (c) of the Code in the manner set out by the law and the case law, but applied Section 235 of the Code instead which has no application whatsoever in the case at bar. The Adjudicator was inspired by the wrong Section of the Code (see paragraph 21).

With great respect, the Adjudicator's reasoning, articulation, thinking process, analysis, and findings are patently and grossly unreasonable, and simply put not logical nor consistent with the law and the evidence. Applicant also maintains that the Adjudicator was not fair and impartial. The applicant informed the Adjudicator of his perception during the trial on more than one occasion.

For instance, the applicant claimed, "back pay" plus "damages for loss of employment". The Decision, however, reveals that loss of salary and damages stemming from loss of employment are treated as one and only remedy.

Furthermore, the applicant intends to argue and demonstrate that the Adjudicator wrongfully applied the law on dismissal. At paragraph 4 of his Decision, the Adjudicator asserts the position to the effect that applicant's dismissal was not unjust "...nor a dismissal for justifiable cause". With respect, the only possible outcome is that applicant's dismissal was just, or it was unjust (Maheu et als. v. Roneo Vickers Canada Ltd. et als., [1988] QCCA 780). Since the Adjudicator's position is flawed, the outcome/his conclusions are equally flawed.

The applicant will also argue that the Adjudicator's award is manifestly unreasonable and that he is entitled to loss of salary as well as damages for loss of employment, based on the make whole approach and Section 242(4) a) and c) of the Code.

(ii) **The Adjudicator erred in law in making his Decision, whether or not the error appears on the face of the record. The error is patently unreasonable. Awarding only a severance is contrary to the law and jurisprudence.**

Paragraphs 20, 21, 22, and 23 of the Decision suggest that Section 325 of the Code applies to the applicant and, more importantly that the applicant is only entitled to "a package" (i.e. indemnity based on his position and years of service). The Adjudicator, however, is totally silent on the applicant's claim for loss of salary (i.e. Section 242 4) (a)).

The applicant was hired by CIBC (hereafter "**the Bank**"), in 1990, and terminated, on June 14, 2016.

The applicant contested his abrupt termination. The hearing on the complaint was held, on December 19, 2017, April 25 and 26, May 31, June 7 and July 24 to 26, 2018.

On September 18, 2018, the Adjudicator ruled that the applicant was unjustly dismissed, but rejected his request for re-instatement.

At paragraph 49 of his ruling, the Adjudicator states "...severance compensation is due..." to the applicant.

The applicant contested the Adjudicator's decision. On September 24, 2019, the Honourable Justice Peter G. Pamel of the Federal Court dismissed applicant's application for review but stressed that Subsection 242 (4) of the Code is clear in its application in as much as **it is designed to fully compensate an employee** who is unjustly dismissed.

The **1st hearing on quantum** was held, on December 18, 2019. The hearing lasted one half day. Two (2) witnesses testified (the applicant and Ms. Mona Moussa for the Bank).

The applicant requested the following remedies based on the "**make whole approach**", during the trial on quantum:

1. loss of salary, plus interest;
2. indemnity for loss of employment (in lieu of re-instatement);
3. moral damages; and
4. legal fees.

This is acknowledged by the employer.

On January 28, 2020, the Adjudicator rendered his decision on quantum thereby awarding the applicant a severance equal to $10,250.00 (gross), but dismissing his claim for moral damages and legal fees. The claim for loss of salary was completely ignored.

On February 26, 2020, the applicant filed an application for a judicial review.

On October 6, 2021, the Honourable Justice St-Louis, of the Federal Court, allowed the Application for judicial review and sent the matter back to the Adjudicator "for a new determination".

The **2nd hearing on quantum** was held, on March 17 and October 25, 2022.

The Adjudicator's Decision is grossly and patently unreasonable.

The Adjudicator neglected to exercise his jurisdiction.

The Adjudicator misinterpreted, once again, the law as well as the remedies sought by the applicant.

The Adjudicator totally ignored the applicant's claim for loss of salary. This issue, although, mentioned in the Decision, is not properly addressed. The Adjudicator treated loss of salary and damages for loss of employment as one and awarded applicant damages for loss of employment (see paragraphs 22 and 23 of the Decision). The Adjudicator neglected once more a significant component of the applicant's claim. In doing so, the Adjudicator did not exercise his jurisdiction thereby causing serious prejudice to the applicant.

The Decision, as a result, is patently unreasonable, illogical, not well articulated and not sound in law.

(iii) **The Adjudicator acted without jurisdiction, acted beyond his jurisdiction and/or refused to exercise his jurisdiction.**

On September 24, 2010, this Honourable Court held, in the matter of Kouridakis and CIBC (2019 FC 1226), the following:

> "[92] It seems to me that the Arbitrator was not using the word "severance" in the sense normally used for dismissal cases such as in section 235 of the Code.
>
> [93] The purpose of a monetary remedy under the Code is to place the complainant in the same position as he or she would have been in but for the unjust dismissal (Bell and Braithwaite, Canadian Employment Law, s21:110.2). As Mr. Kouridakis points out, the aim is to make the complainant "whole" (First Nation, 2016 FC 769 at paragraph 98; Slaight Communications Inc. v. Davidson, [1985] 1 FC 253 at pages 257 and 260 (CA), upheld [1989] 1 SCR 1038).
>
> [94] In fact this Court has held that in this context, **it is an error to limit the amount of damages to the amount of severance pay** as provided for in section 235 of the Code Wolflake Firt Nation v. Young, (11947) 130 FTR 115 aqt paragraphs 51 and 53 (TD). As stated by Mr. Justice Nadon, as he then was, at paragraph 51:
>
> > [51] Subsection 242(4) of the Code is clear in it's Application; it is designed to fully compensate an employee who is unjustly dismissed. It is not limited to the amount of severance pay to which the employee is entitled. It is not calculated by determining the notice period which should have been given to the employee.
> >
> > In Davidson v. Slaight Communications Inc., [1985] 1 F.C. 253; 58 N.R. 150 (F.C.A.), affd. [1989] 1 S.C.R. 1038; 93 N.R. 183, Mahoney, J.A., stated at p. 260: "The intent of s. 61.5(9) (now 242(4)) is to empower the adjudicator, as near as may be, to put the wronged employee in the position of not suffering an employment related disadvantage as a result of his unjustified dismissal."

Notwithstanding the above, the Adjudicator ruled again to the effect that the applicant is only entitled to a severance; a severance which is grossly and patently unreasonable.

The Adjudicator failed and neglected to follow the directive(s) of the Federal Court, in September 2019 and in October 2021. By refusing to follow the path laid down by this Honourable Court, the Decision of the Adjudicator is patently unreasonable.

The Adjudicator's failure to act within his jurisdiction and/or refusal to exercise his jurisdiction, is highly detrimental to the applicant's rights under the Code.

It should be noted that the applicant outlined to the Adjudicator, prior to the commencement of the hearing and during the 2nd hearing on quantum, the fact that he is seeking the salary loss he sustained since his termination plus an indemnity for loss of employment.

Consequently, Applicant invites this Honourable Court to issue the appropriate order in the circumstances and/or order and condemn the employer to pay to the applicant the salary he lost plus interest (from June, 2016 – present day), as well as an indemnity equal to one month of total pay for every year of service for loss of employment.

(iv) **The Adjudicator acted in a way that is contrary to law by rendering a decision which is unreasonable, and not defendable in respect of the facts and law as regards mitigation of damages.**

The Adjudicator's analysis pertaining to "mitigation of damages", (see paragraphs 24 and 25 of the Decision) is, simply put, flawed, not logical, anything but sound and patently unreasonable.

Firstly, the employer did not offer evidence (no one testified on behalf of the Bank), save and except for a document entitled "Annual Review of the Labour Market, 2016" prepared by Statistics Canada.

On the other hand, the applicant described what he did to try and find a job.

Secondly, the Adjudicator opined to the effect that, the applicant's efforts were minimal (see paragraph 27 of the Decision). This said, the Adjudicator's findings about statistics Canada's "Annual Review of the Labour Market 2016" are surprising, alarming and simply shocking - considering there was no evidence regarding the job market (i.e. the banking industry in Montreal). There was zero proof concerning banks and/or credit card companies.

At paragraph 27 of the Decision, the Adjudicator states "there is little doubt that another suitable job could have been found within one year".

Since the employer failed to offer an iota of evidence regarding the Montreal financial industry, the Adjudicator could not draw the conclusion that he did; and he should have limited his observations and based his Decision on the evidence – nothing else. With great respect, the Adjudicator's personal opinion is without merit, nor is there room for presumption/s of any nature.

Thirdly, the Adjudicator neglects to analyze the question of mitigation of damages in function of the employer's burden of proof.

As the employer did not offer proof to the effect that a) there are/were jobs available matching respondent's profile, in Montreal [in the banking industry], and b) the applicant would have secured a job had he applied for one of the available job opportunities, it is obvious the Adjudicator could not reach the conclusion that he did.

The applicant intends to argue that the Adjudicator unilaterally introduced unsupported evidence to help the employer's case (this unfortunately is not the 1st time). The Adjudicator's finding is not based on evidence. Furthermore, he also acted in a manifestly biased manner to the applicant's detriment. This is patently unreasonable and grossly unfair, the whole it is respectfully submitted.

Another gross and patently unreasonable error committed by the Adjudicator stems from the fact that he misinterpreted and wrongfully applied the leading judgments of the Supreme Court of Canada on mitigation of damages.

The applicant will be referring to the decisions of Red Deer College v. Michaels (1976 2 SCR 324), and Evans v. Teamsters Local Union No: 31, [2008] SCC 20.

In Red Deer College, Mr. Chief Justice Laskin opined (at page 332), the following:

> "In my opinion, the obiter statement of MacDonald J.A. in John East Iron Works, Ltd. v. Labour Relations Board of Saskatchewan[8], at p. 57, that "the onus of proving that the employee took reasonable efforts to obtain other employment and failed to do so is upon the employee" does not state the law correctly. I contrast this observation with that in Yetton v. Eastwoods Froy Ltd.[9], a wrongful dismissal case, where Blain J. said (at p. 115) "if he can minimise his loss by a reasonable course of conduct he should do so, though the onus is on the defaulting defendant to show that it could be or could have been done and is not being and has not been done". "

The applicant shall refer this Honourable Court to other decisions on mitigation of damages.

(v) **The Adjudicator based his Decision, regarding moral damages, on an erroneous and patently unreasonable interpretation of the facts and the law, and finally made his Decision without regard to the material before him.**

The Adjudicator dismissed the applicant's claim for mental distress/moral damages (see paragraphs 7-10).

The applicant was terminated after 16 years of service, in mid-June 2016.

The Bank paid to the applicant a bonus often and regularly (in addition to pay raises), during his employment.

Additionally, the Bank awarded the applicant numerous certificates of appreciation. In October, 2015, the Bank remitted to the applicant a certificate of recognition and appreciation for valued services and dedication, just eight (8) months before his dismissal.

On April 6, 2016, the applicant was involved in an incident with his immediate superior, namely Annie Dumaine. Ms. Dumaine claims the applicant grabbed her. The applicant, on the other hand, affirms that he touched Ms. Dumaine's arm to signal his intention to speak with her; to reason with his superior, who is ignoring him (his concerns). The applicant literally begged to speak with Ms. Dumaine to clear the air, but she refused to listen (the Adjudicator preferred the applicant's version of events).

The applicant informed his co-workers, on April 6, 2016 (in the evening), that he may go on sick leave. On April 7, 2016, the applicant forwarded a medical note to the Bank (the applicant has not felt well, on account of the work environment, since late 2015, early 2016).

The last medical note remitted to the Bank is dated, June 1, 2016. The medical note reads "off work for another four (4) weeks". The applicant, therefore, was scheduled to return to work, on July 1, 2016.

While on sick leave (on June 6, 2016), the Bank informed the applicant that it wants to meet with him, on June 14, 2016.

When the applicant showed up to the meeting, on June 14, 2016, he was met by corporate security. The applicant was confused not knowing why corporate security wants to meet with him (knowing he is on sick leave).

During the interrogation by corporate security, the applicant discovered (on June 14, 2016), for the first time, that Ms. Dumaine claims that she was assaulted by applicant, on April 6, 2016. Corporate security was only interested in knowing whether the applicant grabbed Ms. Dumaine's arms [it should be noted that the Bank never asked to meet with the applicant nor ask him for his version of events].

The applicant was abruptly fired, after questioning by corporate security.

The Bank dismissed the applicant while he was on sick leave (despite 16 years of loyal service), without offering a severance.

When informed that he is fired, the applicant asked the Bank "why am I fired", but the Bank refused to answer. The applicant insisted on knowing why he was terminated. In mid-August 2016, the employer advised Labour Canada (not the applicant) of the alleged reasons of the termination.

The applicant intends to argue that the Bank acted (during the period of the summer 2015 and August 2016) in bad faith, recklessly, called him to a meeting under false pretence, lied to him, retaliated after learning that he would be returning to work, and after he complained of Ms. Dumaine's erratic behavior. The foregoing was proven during the trial on the merit of the complaint. Contrary to the Adjudicator's finding, the employer was anything but patient, transparent, in good faith or sincere.

Furthermore, it is patently unreasonable to assert the position to the effect that a wrongful dismissed employee is entitled to damages for mental distress only if he/she consulted a psychologist or a psychiatrist (see paragraph 7 of the Decision).

Moreover and seeing that the Bank acted in bad faith and in an abusive manner before, during and subsequent to his dismissal, the applicant will argue that the Decision is patently unreasonable and not logical. Applicant, is entitled, given the circumstances, to moral damages in the amount of $7,500.00.

It cannot be ignored that the applicant was dismissed when he was on sick leave.

(vi) **Since the Adjudicator did not apply the Code and the case law, with regard to legal fees, his Decision is patently unreasonable.**

The Adjudicator ordered the employer to pay legal fees in the amount of $7,200.00 (see paragraph 32 d of the Decision).

The Adjudicator addresses the issue of **legal fees** at paragraphs 11-16 of his Decision.

The context of the applicant's claim is critical. Applicant's Trial on the merit of the complaint for wrongful dismissal lasted eight (8) days, followed by a one (1) day hearing before the Federal Court [the 1st Judicial Review], followed by a hearing on quantum which lasted one half day [the 1st hearing on quantum], followed by a one day hearing before the Federal Court [the 2nd Judicial Review] and finally two and a half days for the hearing on quantum [2nd hearing on quantum]; not to mention the numerous days of preparation.

The applicant urged the Adjudicator (before and during the hearing) to condemn the Bank to pay his legal fees, more specifically a) the fees he paid to date, and b) the fees to be paid on the basis of his upcoming Decision.

Unfortunately, the Adjudicator totally ignores the fees paid to date (i.e. $98,000.00) by the applicant, and focuses instead only on "the fees to be paid on the basis of his Decision".

The Adjudicator cited a few decisions (i.e. Transport St.Lambert and Christian Filion v. Banca Nazionale Del Lavoro of Canada, (2010) CF 100, 1988, A.C.F. 594), which opine that a wrongfully terminated employee is entitled to legal fees only in the event of exceptional circumstance or in rare and exceptional circumstances.

The applicant shall argue that the Adjudicator's conclusion a) ignores and fails to implement applicant's claim for legal fees which is based on the "**make whole approach**", b) neglects the background and history of the applicant's unjust dismissal and judicial context, thereby committing a patently unreasonable error, and finally c) is not supported by the evidence (**Exhibit Q-12, Q-20, and Q-21**). The evidence reveals without a doubt that the applicant paid $98,000.00, for legal fees. The mandates for professional services show that a) the applicant had to pay a lump sum, on several occasions, and b) the applicant agreed to pay his attorneys on additional fees in the event of success.

Applicant intends to argue that he was obliged to pay a significant sum of money to protect his rights.

The applicant will argue that a successful complainant is entitled to have his legal fees paid and reimbursed by the Bank (the applicant filed his legal invoices and proof of payment, as **Exhibit Q-12, Q-20, and Q-21**). The Adjudicator for all intent and purpose applied one clause of the mandates instead of the mandates as a whole. This is not rational or sound, and, the evidence, in question, was not challenged, in any way, by the employer.

The applicant incurred legal fees because he was unjustly terminated. The expense is a direct result of the employer's decision.

(vii) **In conclusion, the applicant is seeking the review of the Adjudicator's Decision because:**

a) the Decision by the Adjudicator is not reasonable in as much as its decision-making process lacks justification, transparency and intelligibility. Moreover, the reasoning adopted by the Arbitration Tribunal is not coherent, sound or logical. The conclusions challenged by the applicant are in fact not logical;

b) the Decision is irrational and unreasonable;

c) the Decision is not cogent and thorough.

d) the Adjudicator exceeded and failed to exercise his jurisdiction.

Statutory provisions that will be invoked:

(i) sections 18.1 and 28 of the *Federal Court Act*;

(ii) section 167(3) of the *Canada Labour Code, Division XIV*

This application will be supported by the following material:

(i) affidavit from the applicant;

(ii) decision rendered by the Adjudicator, dated January 11, 2023;

(iii) memorandum of fact and law; and

(iv) all other documents relevant to the application that will be accepted by this Court **[Exhibit Q-1 to Q-26].**

This applicant requests the office of the Adjudicator to send a certified copy of the File before the Adjudicator to the applicant and to the registry:

MONTREAL, February 10, 2023

Me Raphael Levy
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ARBITRATION TRIBUNAL

CANADA
PROVINCE OF QUEBEC

Deposit number :

Date : January 11, 2023

BEFORE ADJUDICATOR : ME MARK ABRAMOWITZ

George Kouridakis

"Complainant"

And

Canadian Imperial Bank of Commerce

"Respondent" ("CIBC", "the Bank")

Grievance : HRSDC file: YM2707-10803

REDETERMINATION OF QUANTUM

BACKGROUND

[1] The origin of the matter at issue derives from a complaint of alleged unjust dismissal of George Kouridakis by the Bank on June 14, 2016 after 16 years of service

as a clerical employee. The dismissal was dealt with in eight days of hearing during which numerous exhibits (approximately 82) were examined. In the result the dismissal of complainant was maintained in a decision of the undersigned rendered on September 28, 2018, subject to payment of an appropriate severance sum, the quantum of which was reserved for a separate hearing.

[2] The decision was contested before the Federal Court, but was rejected by Pamel J., on September 24, 2019. Thus the question of quantum came on for hearing before me and was the subject of a decision rendered on January 28, 2020 in virtue of which complainant was granted a sum of $10,250 in satisfaction of his various claims.

[3] The quantum aspect of the undersigned's decision was again contested before the Federal Court and Justice St-Louis found it wanting in several respects and returned the matter to me for "*redetermination*"[1]. Thus further hearings on this question were held on March 17 and October 25, 2022.

[4] Effectively, complainant insisted that his dismissal was unjust. Relying on article 242(4) of the *Canada Labour Code (*C.L.C.) combined with the make whole approach he is asking for all back pay (including bonuses) dating from his dismissal to the present day (i.e. March 25, 2022)[2]; $7,500 as moral damages for the ordeal, anxiety, depression mistreatment and, lack of discussion of workplace issues; legal fees of (approximately) $56,740 according to complainant's exhibits Q-12, 20 and 21, (although in summary

[1] Judgment rendered October 6, 2021.
[2] Initially the claim was one (1) month's salary for each of Mr. Kouridakis' 16 years of service.

argument his counsel claimed a global amount in excess of $100,000). In point of fact, the ending of complainant's employment with the bank was not unjust nor a dismissal for justifiable cause based on heinous acts. Rather it was an administrative decision related to repeated personal behavioral tendencies of complainant to negatively question and criticise his managers and their authority rendering the workplace atmosphere and relationships tenuous and less than harmonious. This attitude had persisted although complainant had been the subject of uncontested reprimands and warnings which, unfortunately, had no corrective effect.

[5] In the interests, therefore, of maintaining managerial authority and harmony in the workplace, the employment of complainant was ended, subject to appropriate severance compensation which is now at issue. Given the deterioration of the employee-employer relationship, reinstatement was not viable as a component of partial compensation. Interestingly, although complainant's counsel argued at the first hearing on the quantum that there was no unreasonable misbehavior on the part of complainant directed towards his manager or, alternatively, that it had been condoned, he suggested that an unpaid suspension of the month would be appropriate in the circumstances.

[6] With regard to the various matters at issue on the quantum due, I shall first deal with the periphery elements claimed.

COMPENSATION / INDEMNITY

Moral damages

[7] The moral damages alleged an account of anxiety and upset due to the conflictual relationship of Mr. Kouridakis with his manager and his ultimate termination supposedly resulted in a deprivation of restful sleep and hives due to a condition of nervous upset or disequilibrium, yet he did not seek counsel from a psychologist or a psychiatrist. Rather he consulted his family physician who prescribed medication for what he described as work upset, or "*burnout*". But, this condition was of his own making and not of his managers' legitimate exercise of their authority.

[8] As to the upset caused by his dismissal, I reiterate the words of justice Iacobucci of the Supreme Court in *Wallace c. United Grain Growers Ltd.*, (1997) 3 R.C.S. 701, at pages 745-746:

> It has long been accepted that a dismissed employee is not entitled to compensation for injuries flowing from the fact of the dismissal itself: [...] Thus, although the loss of a job is very often the cause of injured feelings and emotional upset, the law does not recognize these as compensation losses. However, where an employee can establish that an employer engaged in bad faith conduct or unfair dealing in the course of dismissal, injuries such as humiliation, embarrassment and damage to one's sense of self-worth and self-esteem might all be worthy of compensation depending upon the circumstances of the case. In these situations,, compensation does not flow from the fact of dismissal itself, but rather from the manner in which the dismissal was effected by the employer.

[9] In my view, there was no bad faith conduct or unfair dealing with the behavioural transgressions of complainant. Rather, the employer showed great patience in the hope of Mr. Kouridakis remedying his unacceptable behavioural tendencies.

[10] Thus there will be no sum accorded for the alleged moral damages.

Legal fees

[11] As to the claim for legal fees, once again, I quote the rationale of justice Stone in *Banca Nazionale Del Lavoro of Canada Ltd. v. Lee-Shanok*, at page 21:

> [...] The Respondent had been put to a good deal of legal expenses in prosecuting his complaint, and there had been lengthy delays. But, despite its breadth of language, I do not think that paragraph 61.5(9)(c) contemplates the awarding of solicitor and client costs in all cases regardless of circumstances. Even in the courts, that sort of award is ordered "only in rare and exceptional circumstances to mark the court's disapproval of the parties' conduct in the litigation" (Isaacs v. MHG International Ltd, (1984), 45 O.R. (2d) 693 (Ont. C.A.) at page 695), and a judge must be "extremely cautious in departing from the general rule" that only party and party costs should be allowed a successful litigant (Vanderclay Development Co. Ltd. v. Inducon Engineering Ltd. et al., [1969] 1 O.R. 41 (Ont. H.C.), at page 48). An extraordinary award of this kind ought only to be made in circumstances that are clearly exceptional, as would be the case where an adjudicator wished thereby to mark his disapproval of a party's conduct in a proceeding. To allow them as a matter of course would, I fear, discourage an employer from defending his action lest he be required not only to absorb his own costs, but to pay his opponent's costs as well. I am not persuaded that Parliament had such a consequence in mind in enacting paragraph 61.5(9)(c) of the Code. (now article 240).

[12] This reasoning was cited with approval in:

- *Transport St-Lambert et Christian Filion*, 2010 CF 100
- *Banque Nationale du Canada et Monique Lajoie*, 2007 CF 1130

Justice Beaudry, in the aforementioned *Banque Nationale* case, at paragraph 57, stated:

> [...] La jurisprudence est claire sur ce point. Le remboursement des honoraires est justifié seulement dans des circonstances exceptionnelles et la partie qui les

> réclame doit prouver une conduite répréhensible (*Banque Nationale du Canada c. Lajoie*, 2007 CF 1130, 320 F.T.R. 152).

[13] Simply put, I do not find in the comportment of the employer any reprehensible conduct. The claim for legal fees in their entirety will not be allowed. However, given the length of the hearings, the reasoning of arbitrator Bastien in *Bank of Canada and Lafleche*, D.T.E. 2013T268, paragraph 56, is applicable in part:

> [56] As an extension of the make whole principle envisaged by the Code - distinct from those borrowed from the common law advocated by the colleague, and unless her counsel acted inappropriately, the employee so dismissed is entitled to the payment of her legal fees. Otherwise, she would end up with less in her pocket than would have been the case if her employment had not been terminated.

I would, however, qualify this statement by adding thereto: "*or part thereof as a matter of equity*" in view of the ratio of *Lavaro v. Lee Shanok et al*, cited above.

[14] In the initial mandate with his former attorney, complainant agreed:

> ENGAGEMENT LETTER
> AND RETAINER AGREEMENT
>
> BETWEEN: DIMAKOS LAW GROUP
>
> AND: GEORGE KOURIDAKIS (Hereinafter the "Client")
>
> [...]
>
> 1. <u>*Scone of Mandate*</u>
>
> We are instructed by the Client and are hereby authorized to assume conduct of the legal matters presented to us for representation as your lawyers. In the course of our representation of the Client, we will provide reports and updates to you on an interim basis when the matters are active. You authorize us to do all things necessary relating to the legal matters affecting the Client, all for the protection of the Client's interest, and to act as the Client's lawyer.

2. *Fees*

Legal fees have been discussed and have been agreed upon by parties. Fees are based upon the following considerations, among others:

i) time and labour that we spend on your behalf;
ii) complexity of the matter, difficulty and novelty of the questions involved, skills, specialized knowledge and responsibility of the lawyer;
iii) amount of money and value of property involved;
iv) number and importance of documents prepared or reviewed;
v) circumstances under which services are rendered;
vi) importance of this matter to you;
vii) customary charges of other lawyers of equal standing; and
viii) the end results achieved.

3. *The legal fees will be based on the following payment terms:*

An initial payment of 5,000.00$ plus all applicable taxes, in addition of 10% of all sums achieved for the client, whether by settlement, judgement or any other means will be payable to Dimakos Law Group. The initial payment is non-refundable should the client choose to terminate the present mandate prior to a judgement or settlement reached.

All costs incurred on behalf of the client will be assumed by the client in their entirety upon receipt of invoice for same.

[15] For personal reasons, Me Dimakos could not proceed with the mandate and it was undertaken by the current attorneys, Levy Tsotsis, to whom the initial deposit of $5,000 was transferred subject to the following:

Re: George Kouridakis
-vs- Canadian Imperial Bank of Commerce
No: YM2707-10803
O/F: KO-005-17 (CD)

MANDATE

I, the undersigned, George Kouridakis, hereby mandate the offices of Levy Tsotsis, more specifically Me Raphael Levy, to represent my interests in the file mentioned above and in consideration thereof recognize and agree that I shall be responsible for paying the following sums:

(a) a lump sum in the amount of $15,000.00* plus G.S.T. (5%) and Q.S.T. (9.975%) (TOTAL: $17,246,25*), payable upon signature of the present Mandate;

(b) any and all disbursements, out of pocket expenses in relation with the present file (for example: photocopies, long distance communication, transportation, parking, etc.); and

(c) a fee equal to 20%, plus tax, of the gross amount collected on my behalf by way of a Settlement of Judgment.

I understand that this Mandate will have to be renegotiated in the event of a Judicial Review.

[16] In effect, complainant committed himself to pay 20% of the gross amount collected based upon the outcome of the litigation of his complaint. What was subsequently negotiated with regard to reviews did not fall within the purview of the above. In point of fact, the application of complainant for review of the decision on the merits maintaining his dismissal with severance compensation was dismissed with costs of $1,000 against complainant. Thus, for the first eight days of hearing no fees are due thereon. As to the two and one-third (2 1/3) days of hearing on the quantum its redetermination of hearing this, at best, is subject to the 20% of the amount granted as per the fee mandate.

Indemnity

[17] In the decision on the merits, I reasoned that the last incident of the conflictual relationship and criticism of complainant with management[3] was not, in itself, sufficient to justify an immediate dismissal. But, given the history of his un-remediated general behavior notwithstanding repeated warnings, the interests of maintaining satisfactory

workplace harmony necessitated the termination of his employment, subject to compensation as per article 242(4) C.L.C.

[18] The principles to be considered in determining the indemnity due to complainant in the circumstances are:

a) the number of years of service with the employer;
b) the position occupied at the time of dismissal;
c) the age of complainant;
d) the circumstances surrounding the dismissal and the hiring.

[19] At the time of his dismissal, complainant was 38 years of age and, after 16 years of employment, he still occupied a clerical entry level position for which no specialized internship or apprenticeship was required. His annual salary was $41,000 subject to various annual bonuses of approximately $2,000 if and when justified by acceptable performance. The clerical positions he occupied throughout can be characterized as mundane and banal. It required no unscaled level of education and his graduation from a two year post-high school community college (CEGEP) cannot be qualified as such. At best, it can be said that he had the attribute of being functionally bilingual in English and French (which is not unusual nor a particularly meritorious ability) for a native Montrealer. This ability simply allowed Mr. Kouridakis to listen to and monitor (calls from clients and Bank branches) as part of his last job function.

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[3] The "*elevator incident*".

[20] While complainant's counsel originally asked for compensation of one month's salary for each of Mr. Kouridakis' 16 years of employment (i.e. approximately $68,800: $41,000 + $2,000 x 16 years), as some arbitrators have granted, at the hearing of the "*redetermination*", he asked for all lost salary and bonuses from the date of dismissal of June 14, 2016 to the date of rehearing on October 25, 2022. The implication was that Mr. Kouridakis was hired for a guaranteed indeterminate lifetime contract, a proposition I cannot accept. In my view, an employer has the right to end an employee's work term or contract subject to appropriate compensation.

[21] While the compensation due in the circumstance is not limited to the criteria set out in article 235 C.L.C. that is: "*two days wages at the employee's regular hours of work [...] in respect of each completed year of employment [...] and five days wages at the employee's regular rate of wages for his regular hours of work.*" It can perhaps serve as a minimum guideline in certain circumstances.

[22] At the rate of $41,000 per year, the daily wage of Mr. Kouridakis was $112.33. Thus, 2 days wages = $224.66 x 16 years = $3,594.56, plus 5 days x $112.33 = $561.65, or a total of $4,156.21. Obviously, this minimum is not the compensation foreseen in this instance but, rather, likely relates to layoffs for lack of work where the employment contract continues and the employee is subject to recall, which is not the case here.

[23] A reference to certain compensation paid to persons holding clerical positions for periods of service, varying from 7 to 11 years[4] showed an indemnity of 9 months' salary. Given that in the case of Mr. Kouridakis', his "career" with the Bank was 16 years, or approximately doubles that of these examples. Using this multiple (2 x 9 months or one and one half years salary), the indemnity due him might reasonably amount to $60,000. From this amount, one must necessarily deduct a sum on the basis of mitigation of damages had he undertaken to find comparable employment. However, his efforts in this regard were minimal.

Mitigation of damages

[24] Following his dismissal, Mr. Kouridakis initially applied for two jobs at a bank and one at the post office, without success. Neither, the job applications nor the responses were produced as exhibits. He thus undertook tutoring certain members of his family in French and mathematics for which he was paid a nominal sum of $20 in cash for each study session of 3 hours per day, 5 days a week. No further efforts were made at finding employment until March 2022, when he unsuccessfully applied for a job at a bank and thereafter expended no further time in job searches. Thus from June 2016 to the date of re-hearing on October 25, 2022 he has remained for all intents and purposes-unemployed.

[25] While his counsel took exception to the judicial notice taken by the undersigned of the numerous signs posted outside or inside various commerce: "*nous embauchons* -

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[4] *Le Congédiement en droit québécois en matière de contrat individuel de travail*, 3th Edition, Volume 1,

we are hiring", as well as newspaper reports of an active economy in Montreal, the Bank's counsel, as part of the redetermination hearing, produced statistics of Canada's "*Annual review of the labour market, 2016*"[5], showing that: "*The unemployment rate in Quebec had declined 0.5 percentage points to 7.1% in 2016, the lowest on record for the province since [...]* 1976 *[...])(and) In Quebec, virtually all of the increase was among people living in the Montreal region.*"[6]. Additionally, counsel for the Bank cited article 1479 of the *Civil Code of Quebec*[7], which states:

> 1479. A person who is bound to make reparation for an injury is not liable for any aggravation of the injury that the victim could have avoided.

[26] Thus, as stated in *Le Congédiement en droit québécois en matière de contrat individuel de travail*[8]*:*

> 43.3.7 Des compensations pécuniaires ainsi accordées, les arbitres déduiront les montants gagnés par le plaignant pendant cette période de même que les sommes versées en trop par l'employeur en cours d'emploi. Les arbitres ont aussi adopté le principe de droit civil voulant que le plaignant doive minimiser ses dommages. Le plaignant doit donc raisonnablement rechercher un nouvel emploi de façon à réduire ses pertes au minimum. De plus, les efforts pour se retrouver un emploi devrait augmenter plus le temps entre le congédiement et l'audition du dossier est long.

[27] Again, I underline that the efforts of complainant in this regard being manifestly minimal, there is little doubt that another suitable job could have been found within one

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Authors : Audet, Bonhomme, Gascon and Le François, Annexes 9-2 to 9-5.
[5] "*Published by authority of the Minister responsible for Statistics Canada*".
[6] Op. cit., note 5, p. 78.
[7] CCQ-1991.
[8] Op. cit., note 4.

year and a deduction of 30%[9] of the possible maximum indemnity of $60,000 suggested hereinabove (i.e. $18,000) at the very least is appropriate.

Contributory fault

[28] This Tribunal also cannot disregard the contributory fault of complainant to the deterioration of the employee-employer relationship necessitating his termination[10]. Exhibit examples of his general attitude of disrespect and aggressiveness directed towards management and his manager, Annie Duhaime, in particular, are contained in excerpts of a letter of complaint of May 26, 2016 addressed to three of Mrs. Duhaime's superiors:

> I am filing a bullying and harassment complaint against Annie [...]
>
> [...]
>
> In coaching, February 2016, I indicate (to Annie) that I don't feel my work and contribution are recognized, especially with no increase or bonus to which Annie mockingly replies 'Is money the only way you feel recognized?' [...]
>
> [...]
>
> On March 31, 2016, while sitting with Berta for NPS call selection training, [...]; she tells me Annie has her favorites, who get away with doing less. I've noticed her favorites all have French last names. [...] when I expressed my concern about the fairness in the workplace; she refuses to discuss the issue, makes threats to remove me and storms out crying.
>
> My anxiety with this unhealthy work environment reached its pinnacle on April 6, 2016, when Annie was accusing me of having said things on the floor relating to the matter of my opinion expressed in a meeting about starting later than scheduled, which she refused to disclose [...]
>
> Her mystery game, false accusations concerning exceptions on eSP, reprimanding me in the open, making me feel inadequate at my job and refusing

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[9] *Charles and Lac La Ronde Indian Band*, (1998) C.L.A.D. 709, par. 251.
[10] *Campbell c Maislin Realties, a division of Maislin Transport Ltd.*, S.A.-124-83-06.

> to discuss the issues have made me sick. I have to take pills to cope with a manager that has free reign and is rot supervised. Is this what working for CIBC has come to?

[29] And in a letter to the president of the Bank of June 14, 2016, Mr. Kouridakis wrote regarding Annie Duhaime:

> I need to bring this to your attention.
>
> I have been harassed and bullied by Annie since July 3, 2015 when I exceeded my lunch break (the details are included in the previous email to Madelaine Higgins, the senior manager). [...]
>
> [...]
>
> Annie is a bully and needs to be investigated. [...] I guess it was easier to dismiss me than open a can of worms.
>
> [...]
>
> You have a volatile manager acting as she pleases without consideration of others. Everyone fears her and take her abuse. I, on the other hand, don't give in to bullies and tried to reason with her. I expressed my views and she walked out on me to have me fired. I guess the truth hurt her and she got even.
>
> I am taking legal action and with time hope my story reaches the Canadian Press.

[30] The words of Mr. Kourikadis illustrate his disdain for management and his insistence and attitude on speaking his mind regardless of the consequences of diminishing his manager's authority.

[31] Thus, I would deduct a further 10% of the maximum indemnity of $60,000 for contributory fault.

[32] Taking into account the various circumstances, I reluctantly re-determine the compensation indemnity for the termination of his employment as follows:

a) $60,000 as a maximum indemnity

LESS:

b) 30% of $60,000, i.e. $18,000 for failure to mitigate damages ($60,000 - $18,000 = $42,000)

LESS:

c) 10% of $60,000, i.e. $6,000 for contributory fault ($42,000 - $6,000 = $36,000)

ADD:

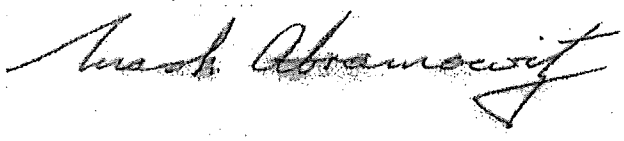
d) 20% of $36,000, i.e. $7,200 as legal fees[11]

leaving a balance of $43,200 as due Mr. Kouridakis.

DECISION

[33] In all, for the reasons hereinabove discussed, the Bank is ordered to pay complainant a total sum of $43,200 in satisfaction of all claims arising out of the termination of his employment of complainant Kouridakis on June 14, 2016.

[11] As per mandate, par. (c), p. 8 supra.



MARK ABRAMOWITZ
Adjudicator (referee)

For complainant: Me Raphael Levy

For respondent: Me Magali Cournoyer-Proulx

Dates of hearing: March 17, 2022 and October 25, 2022

MARK ABRAMOWITZ
ADJUDICATOR

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January 11, 2023

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RE: George Kouridakis vs. Canadian Imperial Bank of Commerce
YM2707-10803
My/🗁 : 875-2101

Me Cournoyer-Proulx,
Me Levy,

Enclosed please find the decision of *Redetermination of quantum* rendered with respect to the above captioned matter.

Yours very truly,

MARK ABRAMOWITZ

MA/fb

Encl.

T-275-23

FEDERAL COURT

BETWEEN:

GEORGE KOURIDAKIS

Applicant

and

CANADIAN IMPERIAL BANK OF COMMERCE

Respondent

NOTICE OF APPLICATION
(Rule 301 of Federal Court Rules, 1998)

[and the Decision rendered by the Adjudicator, dated January 11, 2023]

ORIGINAL

CODE: BL-5465 *O/F : KO-002-20*

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