Federal Court Cour fédérale

Date: 20250113

Dockets: T-275-23
T-289-23

Citation: 2025 FC 60

Ottawa, Ontario, January 13, 2025

PRESENT: Madam Associate Chief Justice St-Louis

Docket: T-275-23

BETWEEN:

GEORGES KOURIDAKIS

Applicant

and

CANADIAN IMPERIAL BANK OF COMMERCE

Respondent

Docket: T-289-23

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

and

GEORGES KOURIDAKIS

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] In 2021, this Court allowed the Application for judicial review Mr. Georges Kouridakis had filed against the decision on the quantum rendered by Me Mark Abramowitz [Adjudicator] and ordered the matter to be sent back to the Adjudicator for a new determination (*Kouridakis v Canadian Imperial Bank of Commerce*, 2021 FC 1035 [*Kouridaki*s *2021*]).

[2] On January 11, 2023, the Adjudicator rendered his new decision on the quantum [Redetermination Decision]. The Adjudicator ordered the Canadian Imperial Bank of Commerce [the CIBC] to pay Mr. Kouridakis a total sum of $43,200 in satisfaction of all claims arising out of the termination of Mr. Kouridakis' employment on June 14, 2016.

[3] In his Redetermination Decision, the Adjudicator re-determined, reluctantly, the compensation indemnity payable to Mr. Kouridakis. Both the CIBC and Mr. Kouridakis applied for judicial review of the Adjudicator's Redetermination Decision, each raising different arguments.

[4] For the reasons that follow, and considering the applicable standard of review is reasonableness, I will dismiss both applications for judicial review. Neither parties have raised an argument that convinces me that the Redetermination Decision is unreasonable.

II. Context

[5] It is necessary to briefly outline the relevant context and the essence of the Redetermination Decision in order to understand the parties' submissions.

[6] From October 2000 to June 2016, Mr. Kouridakis was employed by the CIBC, where he held various positions and received many certificates of appreciation, pay increases and bonuses. Conversely, during his time at CIBC, Mr. Kouridakis also received several warning letters.

[7] On April 6, 2016, Mr. Kouridakis had an incident with his superior. On April 7, 2016, he consulted a doctor and took sick leave. On June 14, 2016, while still on sick leave, Mr. Kouridakis was terminated; the letter he received from the CIBC outlined that he was "terminated for cause and without payment, effective immediately for the reasons discussed with you". Shortly thereafter, Mr. Kouridakis filed a complaint for unjust dismissal pursuant to section 240 of the *Canada Labour Code*, RSC 1985, c L-2 [the Labour Code].

[8] On September 18, 2018, the Adjudicator issued his decision on the merits [the Decision on the merits] and found that the dismissal for just cause, based on the faulty acts of Mr. Kouridakis, had not been sufficiently made out by the CIBC. The Adjudicator, raising the particular circumstances of the matter, found that reinstatement was not a viable option and that termination was necessary. He mentioned that severance compensation was due to Mr. Kouridakis, citing words of Brown and Beatty (*Canadian Labour Arbitration*, 4th edition) on the payment of compensation in lieu of reinstatement (Decision on the merits at para 49).

[9] Mr. Kouridakis applied for judicial review of the Decision on the merits, challenging the Adjudicator's conclusions that reinstatement was not a viable option and that Mr. Kouridakis was entitled to severance compensation, as unreasonable. On September 24, 2019, Mr. Justice Peter G. Pamel (as he then was) dismissed Mr. Kouridakis' application for judicial review, confirmed the Adjudicator's Decision on the merits, and sent the file back to the Adjudicator for a decision on the quantum (*Kouridakis v Canadian Imperial Bank of Commerce*, 2019 FC 1226 [*Kouridakis 2019*]).

[10] On January 28, 2020, in his first decision on the quantum, the Adjudicator ultimately ordered the CIBC to pay Mr. Kouridakis severance of $10,250 in full satisfaction of all claims due to him [First Decision]. Mr. Kouridakis challenged this decision, and in *Kouridakis 2021*, this Court allowed the Application for judicial review and sent the matter back to the Adjudicator for a new determination.

[11] On January 11, 2023, in his Redetermination Decision, the Adjudicator ordered the CIBC to pay Mr. Kouridakis a total sum of $43,200 in satisfaction of all claims. The Adjudicator reluctantly re-determined the compensation indemnity payable to Mr. Kouridakis as (a) $60,000 as a maximum indemnity (one and one half years salary); (b) of which 30% ($18,000) be deducted for failure to mitigate damages; (c) of which another 10% ($6,000) be deducted for contributory fault; and (d) to which 20% of the total indemnity of $36,000 ($7,200) be added as legal fees. The Adjudicator declined to grant Mr. Kouridakis any moral damages.

[12] On February 10, 2023, Mr. Kouridakis applied for judicial review of the Redetermination Decision (file T-275-23) and the same day, the CIBC applied for judicial review of the same decision (file T-289-23).

[13] On May 15, 2023, the Court issued an Order to consolidate files T-289-23 and T-275-23 for the purpose of having the applications heard one after the other by the same judge. The applications remained otherwise separate with respect to evidence and procedural matters.

A. *Procedural Steps and Arguments Raised in File T-275-23*

[14] On March 13, 2023, Mr. Kouridakis served his affidavit, sworn on the same date, attaching no exhibits. On April 11, 2023, the CIBC served the affidavit of Ms. Mona Moussa, Senior Employee Relations Consultant of the CIBC, sworn on the same date, attaching 24 exhibits. There was no cross-examination on either side.

[15] On May 31, 2023, Mr. Kouridakis served his applicant's record; he included 30 documents that were not attached to his March 13, 2023 affidavit, not previously authenticated, and not previously disclosed to the CIBC. These documents, included in Mr. Kouridakis' applicant's record as Q-1 to Q-30, total over two hundred pages.

[16] As arguments in support of his application for judicial review, Mr. Kouridakis submits that the Adjudicator's Redetermination Decision is unreasonable under the applicable standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 83-84, 100-101 [*Vavilov*]). More specifically, Mr. Kouridakis argues that:

1) The Adjudicator failed to exercise his jurisdiction and to apply the law with respect to “loss of salary”, essentially skipping paragraph 242(4)(a) of the Labour Code;
2) The Adjudicator committed a patently unreasonable error of law by poorly analyzing sections 240 and 242(3)(a) and (4) of the Labour Code and by erroneously applying its section 235 when he concluded that Mr. Kouridakis is only entitled to a severance;
3) The Adjudicator’s analysis, reasoning, and outcome are unreasonable and not sound as regard to ordering the CIBC to pay a total of $43,200 in satisfaction of all claims arising out of the termination of his employment;
4) The Adjudicator erred and misinterpreted the law and jurisprudence regarding mitigation of damages; and
5) The Adjudicator’s analysis, reasoning and findings with respect to damages for mental distress and legal fees are not sound, logical or rational, nor are they reconcilable with the intent and purpose of paragraph 242(4)(c) of the Labour Code and the “*make whole*” approach.

[17] Mr. Kouridakis asks the Court to set aside the decision of the Adjudicator and invites it to render the conclusions that the Adjudicator should have rendered and/or to refer the matter back to a new Adjudicator for determination in accordance with directions from this Court.

[18] More specifically, Mr. Kouridakis is seeking an award of at least $349,166, plus interest, corresponding to:

1) $287,000 as a base indemnity for his loss of salary during seven years, plus bonus and benefits;
2) $54,666 for loss of employment, plus bonus and benefits;
3) No discount for failure to mitigate and contributory fault;
4) $7,500 for moral damages; and
5) All his legal fees and those prescribed in his mandates, including the success fee.

[19] Mr. Kouridakis made no claims or submissions as to costs.

[20] In response, and before approaching the merits of Mr. Kouridakis' application, the CIBC asks the Court to rule on the admissibility of certain evidence and documents. First, the CIBC asserts that many paragraphs of Mr. Kouridakis' affidavit must be struck, i.e., paragraphs 14, 16, 18, 21, 25, 27-28, 30-31, 34-39, 43-48, 50-51, 53, 55, 57, and 58-62, since they consist of legal argument, opinion and conclusory statements about the reasonableness of the Adjudicator's decision. Second, the CIBC asserts that Mr. Kouridakis' applicant's record contains dozens of inadmissible documents which were not appended to, or authenticated by, any affidavit and that are thus likewise inadmissible.

[21] Turning to the merits of Mr. Kouridakis' application, the CIBC responds that the Adjudicator made none of the errors alleged in Mr. Kouridakis' memorandum of fact and law. More specifically, the CIBC asserts that (1) the Adjudicator acted reasonably when he determined the quantum of lost salary/lost employment damages; (2) his application of the law of

mitigation was likewise a reasonable one; (3) it was reasonable for the Adjudicator to reject Mr. Kouridakis' claim for moral damages; and (4) it was reasonable for the Adjudicator to reject Mr. Kouridakis' claim for more than $100,000 in legal fees. The CIBC stresses that, since all of Mr. Kouridakis' arguments were reasonably rejected by the Adjudicator, Mr. Kouridakis' application for judicial review must be dismissed. At last, the CIBC claims costs on the upper end of Column IV.

[22] At the hearing for judicial reviews, Mr. Kouridakis sought leave to amend the proceedings from this Court in order to include the contested documents to his affidavit. The CIBC objected to this request. The Court advised the parties that Mr. Kouridakis' request was taken under reserve and it is addressed below.

B. *Procedural Steps and Arguments Raised in File T-289-23*

[23] On March 13, 2023, the CIBC served the affidavit of Ms. Moussa, sworn the same day, attaching 19 exhibits. On March 31, 2023, Mr. Kouridakis served his own affidavit, sworn the same day, attaching no exhibits.

[24] First, in its application, the CIBC again makes an evidentiary objection to portions of Mr. Kouridakis' affidavit. The CIBC asserts that many passages of that affidavit, i.e., paragraphs 8-14, 16, 22 and 24-26, all contain improper argument, opinion, and legal conclusions and should be struck because they are improper and inadmissible as evidence on judicial review.

[25] On the merits, the CIBC submits that the Adjudicator's Redetermination Decision is unreasonable in that it lacks justification and intelligibility as the Adjudicator seemed to believe that the Court's decision in *Kouridakis 2021* required him to arrive at a different conclusion while the Court ordered no such result. The CIBC contends, given that the facts and law were the same, and that the Court in *Kouridakis 2021* had not identified any error of law or fact, that it was unreasonable to reach a different result on redetermination without explanation. The CIBC also submits that it was unreasonable for the Adjudicator to award legal fees as his conclusion is manifestly incompatible with the current state of the law regarding the award of legal fees (solicitor-client fees) and the evidence, or lack thereof, before the Adjudicator (citing *Bank of Nova Scotia v Randhawa*, 2018 FC 487 [*Randhawa*]).

[26] The CIBC seeks an order quashing the decision of the Adjudicator and making the decision that the Adjudicator should have made, namely evaluating damages at $10, 205. In the alternative, the CIBC seeks an order directing the Adjudicator to make a further redetermination. The CIBC requests costs on the upper end of Column IV.

[27] First, on the CIBC's evidentiary objection, Mr. Kouridakis disagrees and contends that the CIBC's objection is unfounded, as well as moot.

[28] On the merits, Mr. Kouridakis responds that the CIBC's application for judicial review, as drafted, is without merit and should be dismissed. Mr. Kouridakis responds that the Adjudicator proceeded with a "new determination" – although Mr. Kouridakis maintains that the Adjudicator failed to exercise his jurisdiction and to apply the law – and that the Adjudicator was by no means bound by his initial findings on the first decision on the quantum, which was set

aside by the Court in *Kouridakis 2021*. Mr. Kouridakis again made no claim or submissions at to costs.

III. Questions before the Court

[29] The Court must decide if:

1) The paragraphs highlighted by the CIBC in Mr. Kouridakis' affidavits are inadmissible and should be struck;
2) The documents attached to Mr. Kouridakis' applicant's record in file T-275-23 are admissible in evidence;
3) Mr. Kouridakis should be granted leave to amend his affidavit in order to properly introduce said documents; and
4) The CIBC and/or Mr. Kouridakis have shown the Adjudicator's Redetermination Decision to be unreasonable under the applicable standard of review.

IV. Analysis

A. *Paragraphs of Mr. Kouridakis' Affidavits Will be Struck*

[30] As outlined above, the CIBC submits that paragraphs 14, 16, 18, 21, 25, 27-28, 30-31, 34-39, 43-48, 50-51, 53, 55, 57, and 58-62 of Mr. Kouridakis' affidavit in the T-275-23 file as well as paragraphs 8-14, 16, 22, and 24-26 of Mr. Kouridakis' affidavit in the T-289-23 file are inadmissible since they all contain improper argument, opinion and legal conclusions.

[31] In its memorandum of fact and law in the T-289-23 file, the CIBC outlines that it raised an objection to Mr. Kouridakis' counsel regarding the admissibility of paragraphs 8-14, 16, 22, 24-26 of Mr. Kouridakis' affidavit in correspondence dated April 12, 2023, asking that Mr. Kouridakis voluntarily strike the offending paragraphs and that all copies of the affidavit, as served, be replaced with a version of the affidavit with those paragraphs redacted or removed.

[32] Mr. Kouridakis did not redact the contested paragraphs. Rather, in his memorandum in the T-289-23 file, he disagrees with the CIBC's position and states that the crux of paragraphs 8-14, 16, 22, and 24-26 of his affidavit are in fact included and/or alluded to by him in his memorandum. Mr. Kouridakis submits the CIBC objection is therefore unfounded as well as moot.

[33] At the hearing, Mr. Kouridakis further argued that assertions based on his experience during the proceedings relating to his dismissal are not opinions and should not be struck. He stressed that this was the third judicial review relating to his dismissal, which justified that he had sufficient knowledge of what the Court could do and that he could relate his feelings in an affidavit. He did concede, however, that certain paragraphs in his affidavit in the T-275-23 file, i.e., 27-28 and 34-36, consisted of opinions.

[34] I agree with the CIBC that the law is clear: affidavits must be confined to facts within the personal knowledge of the affiant and must speak only to those factual matters, without further gloss or argumentation (Rule 81 of the *Federal Courts Rules*, SOR/98-106 [Rules]; *Canada (Attorney General) v Quadrini*, 2010 FCA 47 at para 18 [*Quadrini*]). Opinion, argument or legal

conclusions are the antithesis of neutral factual evidence expected of an affiant. Moreover, an affiant commenting on the evidence that was before the decision-maker to provide his own assessment of this evidence is inadmissible argument (*Shoan v Canada (Attorney General)*, 2017 FC 426 at para 17 citing *Quadrini* at para 18; *Duyvenbode v Canada (Attorney General)*, 2009 FCA 120 at para 2 [*Duyvenbode*]; *Canadian Tire Corporation v Canadian Bicycle Manufacturers Association*, 2006 FCA 56 at paras 11-12).

[35] As Justice Denis Gascon summarized in *SSE Holdings, LLC v Le Chic Shack Inc*, 2020 FC 983 at para 49 [*SSE Holdings*], the affidavit of an ordinary witness, such as that of Mr. Kouridakis, must be confined to facts within his personal knowledge, in accordance with Rule 81, and these affidavits cannot include opinions or legal conclusions.

[36] Where an affidavit contains such inadmissible argument, opinion, and conclusions of law, the remedy is to strike out the parts of the affidavit that do not consist of admissible statements of fact (*Duyvenbode* at para 3; *SSE Holdings* at para 49, citing *Quadrini* at para 18; *Cadostin v Canada (Attorney General)*, 2020 FCA 183 at para 36).

[37] Mr. Kouridakis stresses many of the contested paragraphs are not opinions. However, I note that in *Canada (Attorney General) v Mosaic Forest Management Corporation*, 2022 FCA 216 [*Mosaic Forest*] the Federal Court of Appeal outlined that:

> [15] Opinion evidence may be characterized as evidence where a witness offers an inference from observed facts as opposed to evidence of the witness' own first-hand factual observations. The following excerpt from Paciocco, Paciocco & Stuesser, *The Law of Evidence*, 8th ed. (Toronto: Irwin Law, 2020) at 233–34, provides

a useful discussion of the difference between factual and opinion evidence:

> An inference from observed fact is different than the observed fact itself. A witness who says a wound was life-threatening, for example, is drawing an inference from an observed fact and is therefore offering an opinion. If that same witness merely describes the wound by saying either "the victim had a wound in his neck" or "the carotid artery was severed," that witness is simply reporting an observed fact.

[38] The Federal Court of Appeal further outlined that one of the two exceptions to the general rule that opinion evidence is inadmissible concerns non-expert witnesses, such as Mr. Kouridakis, which may offer their observations in the form of opinion where "(1) they are in a better position than the trier of fact to form a conclusion; (2) the conclusion is one that a lay person can make; (3) the witness has the necessary experience to draw the conclusion; and (4) the opinion is a 'compendious mode of stating facts that are too subtle or complicated to be narrated as effectively without resort to conclusions'" (*Mosaic Forest* at paras 16-17 citing *The Law of Evidence*, above, at 239; *Graat v The Queen*, 1982 CanLII 33 (SCC), [1982] 2 SCR 819 at 837, 840, 144 DLR (3d) 267; *Toronto Real Estate Board v Commissioner of Competition*, 2017 FCA 236 at para 79, 286 ACWS (3d) 369; *Hunt (Litigation guardian of) v Sutton Group Incentive Realty Inc (2002)*, 2002 CanLII 45019 (ON CA), 162 OAC 186 at para 17, 215 D.L.R. (4th) 193 (ONCA)).

[39] I considered Mr. Kouridakis' explanations and arguments in response. However, as mentioned during the hearing, the Rules are clear and this Court is bound by the Federal Court of Appeal's case law, including *Quadrini* and *Mosaic Forest*. As such, the Court is satisfied that paragraphs 14, 16, 18, 21, 25, 27-28, 30-31, 34 -39, 43-46, 48, 50-51, 53, 55, 57, and 58-62 of

Mr. Kouridakis' affidavit in the T-275-23 file as well as paragraphs 8-14, 16, 22, and 24-26 of Mr. Kouridakis' affidavit in the T-289-23 file contain arguments, opinions or legal conclusions, and that they are inadmissible. Further, I am satisfied that no exception to the general rule of inadmissibility of opinion evidence is applicable in this case. I will consequently strike said paragraphs.

[40] That said, I will not strike paragraph 47 of Mr. Kouridakis' affidavit in the T-275-23 file. I am satisfied this does not consist of an argument, an opinion or a legal conclusion, but rather a first-hand factual observation of what allegedly happened during the hearing on the redetermination of the quantum.

B. *Documents Attached to Mr. Kouridakis' Application Record in T-275-23 will be Struck*

[41] The CIBC's second evidentiary objection concerns Mr. Kouridakis' applicant's record which, according to the CIBC, contains dozens of inadmissible documents which were not appended to or authenticated by any affidavit, i.e., exhibits Q-1 to Q-30. The CIBC argues that it is trite law that to be admissible on judicial review, all documents must be attached to an affidavit: "Documents simply stuffed into an application record are not admissible" (citing *Canadian Copyright Licensing Agency (Access Copyright) v Alberta*, 2015 FCA 268 at para 20 [*Access Copyright*]; see also *Rowan Williams Davies & Irwin v ProWise Engineering*, 2019 FC 1199 at paras 8-11; *Jama v Canada (Attorney General)*, 2016 FC 1290 at paras 16-18).

[42] The CIBC further argues that these "exhibits" are not attached to or authenticated by any affidavit and that, pursuant to the Federal Court of Appeal's decision in *Access Copyright*, they

must be rejected on that basis alone. Indeed, according to the CIBC, the so-called "exhibits" include documents from 2021-2022 that were not before the Adjudicator at the original hearing on the First Decision in 2020. As such, the CIBC submits that allowing Mr. Kouridakis to add those documents now would violate the principle that judicial reviews take place based on the evidence before the adjudicator, not based on additional evidence that a party comes up with afterwards.

[43] In addition, the CIBC argues that because these documents were not attached to Mr. Kouridakis' affidavit, it had no notice that they would be relied upon until it received Mr. Kouridakis' applicant's record. As a result, the CIBC outlines it made its decision not to cross-examine Mr. Kouridakis on the understanding that the only documentary evidence he relied upon was attached to his affidavit. The CIBC also argues that admitting these documents now would cause it self-evident prejudice, and that it was entitled to rely upon Mr. Kouridakis' affidavit in making its litigation decisions.

[44] At the hearing, Mr. Kouridakis pointed to the notice of application which states that the application would be supported by "all other documents relevant to the application that will be accepted by this Court [Exhibit Q-1 to Q-26]", amongst other material. Mr. Kouridakis stressed that the CIBC was therefore aware that he intended to rely on these documents as soon as it received the notice of application.

[45] Mr. Kouridakis added that the first paragraph of the Redetermination Decision referred to approximately 82 exhibits which were examined during the eight days of hearing. More

specifically, Mr. Kouridakis argued that exhibits Q-1 to Q-27 were filed during the second hearing on the quantum. With respect to exhibits Q-28 to Q-30, Mr. Kouridakis explained that before the second hearing day, the Adjudicator wrote a letter to the parties' counsel inviting them to provide further representations following this Court's decision in *Kouridakis 2021*. As such, the three exhibits consist of the Adjudicator's letter and each of the parties' additional representations. Mr. Kouridakis therefore submits that the CIBC cannot now claim to be surprised by these exhibits.

[46] Mr. Kouridakis was questioned by the Court at the hearing to determine if, despite the Rules, he was taking the position that he was not required to introduce these exhibits by way of an affidavit. He answered that his experience with this Court was that the registry would confirm if the court file was compliant or not prior to setting a hearing date, and would advise him if the file was not compliant. Lastly, Mr. Kouridakis confirmed that he was aware of the CIBC's objection with respect to the exhibits as of July 2023 when he received the CIBC's respondent record in the T-275-23 file.

[47] The explanations given by Mr. Kouridakis are unconvincing to say the least. As mentioned during the hearing, the Rules provide that admissible evidence must be introduced by affidavit and Mr. Kouridakis has not convinced me that any exception apply in this case. The CIBC aptly points to the Federal Court of Appeal's decision in *Access Copyright* which, contrary to Mr. Kouridakis' position, unequivocally states that:

> [20] Here, we must look at rules 306 to 310. But before doing so, we must appreciate that those rules sit alongside a fundamental general principle: facts must be proven by admissible evidence. There are exceptions to this, such as the availability of judicial

> notice, the presence of legislative provisions speaking to the issue, and an agreed statement of facts (including an agreement that certain documents shall be admissible). Putting those exceptions aside, documents by themselves, not introduced by an affidavit authenticating them, are not admissible evidence. Documents simply stuffed into an application record are not admissible.
>
> [21] Under rule 306 and rule 307, applicants and respondents, respectively, can serve upon each other an affidavit that appends the material. …

[48] Moreover, I agree with the CIBC that admitting these documents would cause it prejudice as (1) it was not aware of their use prior to receiving the applicant's record in the T-275-23 file; (2) Ms. Moussa did not address these exhibits in her own affidavit; and (3) at the time the CIBC considered whether to cross-examine Mr. Kouridakis, no exhibits were appended to his affidavit.

[49] Each party bears the responsibility to ensure its court file is in order. Mr. Kouridakis has not pointed to any Rules or authorities indicating that the Court registry had any obligation to signal the exhibits attached to his applicant's record were improperly introduced, and I have found none. On the contrary, the Federal Court of Appeal has stated that:

> [40] Gratuitously and informally, helpful Registry staff may try to assist with queries about the Rules, particularly queries from self-represented litigants. But it remains the responsibility of all parties, particularly represented parties, to work out procedural matters for themselves.
>
> (*Bernard v Canada (Revenue Agency)*, 2015 FCA 263)

[50] Lastly, I note that the same contested exhibits, i.e., Q-1 to Q-30, as well as two additional exhibits, i.e., Q-31 and Q-32, are included in Mr. Kouridakis' respondent's record in the T-289-23 file, although similarly not appended to, nor authenticated by an affidavit. This is confirmed

by the inclusion of Mr. Kouridakis' T-289-23 affidavit in the CIBC's applicant's record, which shows no exhibit was appended.

[51] Accordingly, I am satisfied that exhibits Q-1 to Q-30 found in the applicant's record of the T-275-23 file as well as exhibits Q-1 to Q-32 found in the respondent's record of the T-289-23 file are inadmissible. They will consequently be struck from the records.

C. *Mr. Kouridakis' Leave to Amend his Affidavit will be Dismissed*

[52] At the hearing for both judicial reviews, Mr. Kouridakis asked this Court for leave to amend the proceedings in order to include exhibits Q-1 to Q-30 to his affidavit in the T-275-23 file. The CIBC objected to this request, highlighting that subsection 75(2) of the Rules provides limited conditions in which an amendment may be allowed during or after a hearing, none of which would apply in this case.

[53] The CIBC added that Mr. Kouridakis was aware of its objections to these exhibits as early as July 2023 when it served its respondent record in the T-275-23 file, but he decided not to amend his applicant's record. The CIBC stressed that granting Mr. Kouridakis' request would cause it prejudice as it proceeded on the basis that no exhibits were enclosed with his affidavit: namely, it did not cross-examine Mr. Kouridakis, and Ms. Moussa did not address these exhibits in her affidavit as they were simply not mentioned in Mr. Kouridakis' affidavit. Therefore, the CIBC submitted that Mr. Kouridakis' request was too late and should be dismissed by the Court.

[54] I agree with the CIBC that none of the limited circumstances provided in subsection 75(2) of the Rules apply. Moreover, given that Mr. Kouridakis was aware of the CIBC's objections to these exhibits for almost nine months prior to the hearing of these judicial reviews and he did not amend his proceedings, I find it is more consonant with the interests of justice to dismiss his leave to amend (*Janssen Inc v Abbvie Corporation*, 2014 FCA 242 at para 3).

D. *The Decision Has Not Been Shown to be Unreasonable*

(1) Standard of Review

[55] I agree with the parties that the Adjudicator's Redetermination Decision must be reviewed against the reasonableness standard. The presumption of reasonableness as the standard of review for an administrative decision was confirmed by the Supreme Court of Canada in *Vavilov* and none of the situations warranting a rebuttal of this presumption arise in the present judicial review (*Vavilov* at paras 25, 33, 53; *Bank of Montreal v Li*, 2020 FCA 22 at paras 23-24 (leave to appeal to SCC refused, 39095 (24 September 2020)); *Bell Canada v Hussey*, 2020 FC 795 [*Hussey FC*], aff'd 2022 FCA 95 [*Hussey FCA*], leave to appeal to SCC refused, 40338 (16 March 2023)).

[56] Under the reasonableness standard, the role of a reviewing court is to examine the reasons given by the administrative decision-maker and determine if the decision is based on "an internally consistent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision-maker" (*Vavilov* at para 85). The reviewing court must consider "the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para

15). The Court must examine "whether the decision bears the hallmarks of reasonableness - justification, transparency and intelligibility - and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" *(Vavilov* at para 99 citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74; *Catalyst Paper Corp v North Cowichan* (*District*), 2012 SCC 2 at para 13).

[57] Where reasons for decision are required, the decision "must also be justified, by way of those reasons, by the decision-maker to those to whom the decision applies" (*Vavilov* at para 86). A reasonableness review is concerned with both the outcome of the decision and the reasoning process leading to the outcome (*Vavilov* at para 83). The Court must focus on the decision the administrative decision-maker actually made, including the justification offered for it, and not on the decision the Court itself would have reached.

[58] In *Vavilov*, the Supreme Court confirmed its earlier guidance from *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board*), 2011 SCC 62 that reviewing courts cannot speculate when the reasons are inadequate: they must be able to "connect the dots" by paying close attention to a decision-maker's written reasons who "must be read holistically and contextually, for the very purpose of understanding the basis on which a decision was made" (*Vavilov* at para 97).

[59] As the CIBC outlines, the reviewing court must be able to trace the decision-maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" (*Vavilov* at para 102).

Absent exceptional circumstances, factual findings made by the decision-maker should not be interfered with by the reviewing court (*Vavilov* at para 125).

[60] However, the Court should not fashion its own reasons in order to buttress the administrative reasons (*Vavilov* at para 96) and it must not make its own yardstick and then use that yardstick to measure what the administrator did *(Vavilov* at para 83). It must consider only whether the decision made by the administrative decision-maker - including both the rationale for the decision and the outcome to which it led - was unreasonable.

[61] Finally, as the Court outlined in *Kouridakis 2019* at paragraph 29 and in *Kouridakis 2021* at paragraph 54, a high degree of deference is particularly the norm where the enabling legislation contains a strong privative clause, such as the one found in section 243 of the Labour Code regarding decisions rendered by adjudicators appointed under section 242 of the Labour Code (*Payne v Bank of Montreal*, 2013 FCA 33 at para 33; *Atomic Energy of Canada Ltd v Sheikholeslami*, 1998 CanLII 9047 (FCA), [1998] 3 FC 349 at para 9 (FCA) [*Sheikholeslami*]; *Transport Dessaults Inc v Arel*, 2019 FC 8 at para 83 [*Arel*]).

(2) Mr. Kouridakis' Arguments in support of his Application

(a) *Did The Adjudicator failed to exercise his jurisdiction and apply the law with respect to loss of salary?*

[62] Mr. Kouridakis submits that during the trial and prior to the Redetermination Decision, he urged the Adjudicator to apply paragraphs 242(4)(a),(b), and (c) of the Labour Code and the "make whole" approach, and to condemn the CIBC to pay the damages resulting from his unjust

dismissal (as per *Wilson v Atomic Energy of Canada Ltd*, [2016] 1 SCR 770 [*Wilson*]).

Mr. Kouridakis alleges that he specifically asked the Adjudicator to order the CIBC:

> i. To pay damages for loss of salary and benefits based on paragraph 242(4)(a) of the Labour Code;
>
> ii. To pay damages for the loss of his job (since he was not re-instated), based on paragraphs 242(4)(b) and (c) of the Labour Code; and finally
>
> iii. To pay damages in the amount of $7,500 for mental distress as well as his legal fees, based on paragraph 242(4)(c) of the Labour Code.

[63] Mr. Kouridakis argues that though he was extremely clear about his claim for loss of salary, the Adjudicator incorrectly identified the remedies sought and neglected, once again, to rule on the most significant demand, i.e., loss of salary. Mr. Kouridakis adds that though the notion of loss of salary or back pay is mentioned in paragraphs 4 and 20 of the Adjudicator's Redetermination Decision, it is not addressed by any stretch of the imagination, nor adjudicated upon. According to Mr. Kouridakis, this is fatal and patently unreasonable.

[64] More specifically, Mr. Kouridakis argues that the Adjudicator "skips over" the remedy for loss of salary based on paragraph 242(4)(a) of the Labour Code and "dives in" to address the question of severance for loss of employment under paragraph 242(4)(c) of the Labour Code (referring to paragraphs 17-23 of the Adjudicator's Redetermination Decision). Mr. Kouridakis further argues that the Adjudicator appears to confuse the remedy for loss of salary with the claim for loss of employment, that the two distinguishable remedies are treated as one, and that this is patently unreasonable. He refers to case law from the province of Quebec, including

Bédard v Minolta Business Equipment, 2008 QCCA 1662 and *Carrier v Mittal Canada Inc*, 2014 QCCA 679, to support his position.

[65] At the hearing, Mr. Kouridakis stressed that it was unreasonable for the Adjudicator not to explain why he did not award the claim for loss of salary given that the Adjudicator asked the parties to submit additional representations on the quantum and that Mr. Kouridakis specifically sought loss of salary under paragraph 242(4)(a) of the Labour Code.

[66] In summary, Mr. Kouridakis alleges that it is abundantly clear that the Adjudicator incorrectly identified Mr. Kouridakis' demands and that the Adjudicator neglected to exercise his jurisdiction by ignoring Mr. Kouridakis' claim for loss of salary, which justifies to set aside the Redetermination Decision.

[67] Mr. Kouridakis submits that the CIBC should have been condemned to pay for the loss of salary, plus interest, he sustained during the period of June 14, 2016 until the present day (minus the salary he earned from tutoring). As outlined above, Mr. Kouridakis thus invites this Court to order the CIBC to pay damages for loss of salary (including a bonus) and benefits, from June 15, 2016 to present day (minus his earnings of $24,000), which amounts to $287,000 ($41,000 times 7 years) for the base salary, excluding interest. In the alternative, Mr. Kouridakis invites this Court to refer the matter back to a new Adjudicator in accordance with directives from this Court.

[68] The CIBC first responds that the Adjudicator did not fail to exercise his jurisdiction, he simply gave Mr. Kouridakis a ruling that the latter did not like. According to the CIBC, this can

be seen from even a cursory reading of the Redetermination Decision, which shows that the Adjudicator was alive to the claims advanced by Mr. Kouridakis: for example, paragraph 17 of the Redetermination Decision expressly cites subsection 242(4) of the Labour Code, while paragraphs 18-23 applies it to the facts.

[69] The CIBC stresses that this is exactly the same section upon which Mr. Kouridakis says that he "exclusively based" his claim and that contrary to the position advanced in his factum, the "make whole" approach does not require the arbitrator to award every remedy listed in subsection 242(4) of the Labour Code. The CIBC refers to *Kouridakis 2019* at paragraphs 35 to 45 in which this Court pointed to Mr. Kouridakis that the Adjudicator had discretion to choose one or more of the remedies listed in subsection 242(4), and is not compelled to award all of them.

[70] Second, the CIBC also responds that the Adjudicator did not ignore Mr. Kouridakis' claims, pointing to Mr. Kouridakis' own factum where he admits that his arguments were explicitly raised in the decision. The CIBC highlights that the Adjudicator provided summaries of Mr. Kouridakis' arguments, as well as detailed explanations for why he was rejecting them (referring to paragraphs 4 and 17-23 of the Redetermination Decision). According to the CIBC, this is not a case where a party's claims were overlooked or forgotten.

[71] I am satisfied that Mr. Kouridakis' argument cannot succeed for two reasons:
(1) Mr. Kouridakis has not convinced me that *Wilson* supports his position that the Adjudicator failed to exercise his jurisdiction; and (2) the Adjudicator's reasons confirm he did not ignore Mr. Kouridakis' claim.

[72] First, Mr. Kouridakis cites *Wilson* as an authority to support the Adjudicator's jurisdiction to apply paragraphs 242(4)(a), (b) and (c) as well as the "make whole" approach to condemn the CIBC to pay the damages resulting from his unjust dismissal. However, I am not convinced *Wilson* provides that the Adjudicator's jurisdiction was constrained to explicitly applying the paragraphs of subsection 242(4) and the "make whole" approach.

[73] From the outset, I note that the Supreme Court of Canada in *Wilson* observed that "the adjudicator has broad authority to grant an appropriate remedy" under subsection 242(4) of the Labour Code (*Wilson* at para 6). In this case, the Adjudicator cited subsection 242(4) at the very beginning of his analysis on indemnity (see Redetermination Decision at para 17 *in fine*).

[74] Further, in *Hussey FCA*, a decision referred to by the CIBC at the hearing, the Federal Court of Appeal was asked to determine if the adjudicator in that file was constrained by judicial precedent, including, but not limited to, *Wilson*. After reviewing the Supreme Court of Canada's conclusions in *Wilson*, the Federal Court of Appeal found in *Hussey FCA* that:

> [47] … *Wilson* deals with the preservation of the rights which the [Labour Code] confers on non-unionized employees in federally-regulated employment. The issue now before the Court, the assessment of the value of those benefits in the case of non-reinstatement, is a fundamentally different question. *Wilson* deals with the protection of the rights conferred by the Unjust Dismissal provisions while the Adjudicator was dealing with the valuation of those rights when they are lost. Recourse to an amount which is proportional in some degree to past service as an element in the valuation exercise may be objected to on philosophical grounds (i.e. it is backward-looking rather than forward-looking) but it cannot be objected to on the ground that it will defeat the operation of the Unjust Dismissal provisions of the [Labour Code].

[75] The Federal Court of Appeal then concluded that the Supreme Court of Canada in *Wilson* "did not stipulate, expressly or impliedly, how the loss of protection from unjust dismissal under the [Labour Code] should be valued when an employee was not reinstated" (*Hussey FCA* at para 50; see also at para 71). Citing *Wolf Lake First Nation v Young*, 1997 CanLII 5057, the Federal Court of Appeal underscored that expressing compensation in terms of a period of monthly pay was not necessarily an error (*Hussey FCA* at para 58).

[76] Hence, the Court is not convinced *Wilson* supports Mr. Kouridakis' argument that the Adjudicator failed to exercise his jurisdiction by not explicitly addressing and/or awarding a specific claim for loss of salary under paragraph 242(4)(a) of the Labour Code. Simply put, *Wilson* did not find that an adjudicator is bound by a specific approach to assess remedies, or compensation, when the employee is not reinstated, as explained in *Hussey FCA*.

[77] In particular, contrary to Mr. Kouridakis' argument, the Adjudicator did not fail to exercise his jurisdiction by awarding a compensation that did not explicitly refer to "back pay" or "loss of salary". As mentioned during the hearing, paragraph 242(4)(a) of the Labour Code does not state "back pay" or "loss of salary", but rather "compensation" to which a maximum value is fixed corresponding to "the amount of money that is equivalent to the remuneration that would, but for the dismissal, have been paid by the employer to the person" (on this: *Bauer v Seaspan International Ltd*, 2005 FCA 292 at para 9 [*Bauer FCA*]).

[78] While the Court is sensitive to the fact that Mr. Kouridakis specifically sought loss of all salary after the Adjudicator requested additional representations to address quantum, the Court is not convinced the Adjudicator failed to explicitly address this claim or that such a failure,

assuming it is such, constitutes a sufficiently central or significant flaw which renders his decision unreasonable. This conclusion is particularly founded on *Hussey FCA*, the Adjudicator's broad discretion as well as the applicable statute discussed above.

[79] Moreover, considering the Supreme Court of Canada and the Federal Court of Appeal's findings on the discretion of the adjudicator under subsection 242(4) of the Labour Code as well as the wording of said subsection, the Court declines Mr. Kouridakis' invitation to consider the state of the law and jurisprudence from the province of Quebec to support his position that the remedy for loss of salary under paragraph 242(4)(a) is distinguishable from the claim for loss of employment under paragraph 242(4)(c).

[80] I note that this Court, including Justice Pamel in *Kouridakis 2019*, and the Federal Court of Appeal, have repeatedly underscored that adjudicators "have full discretion to choose amongst the remedies listed in subsection 242(4) of the Labour Code" (*Kouridakis 2019* at paras 39 citing *Sheikholeslami* at para 12; see also at paras 44-45 citing *Bank of Montreal v Sherman*, 2012 FC 1513 at para 19; *Sheikholeslami* at para 12; *Arel* at paras 74, 83; *Payne v Bank of Montreal*, 2013 FCA 33; also on this: *Amer v Shaw Communications Canada Inc*, 2023 FCA 237 at para 67).

[81] In other words, loss of salary or back pay or indemnity is but one of the many compensation that an adjudicator may award in light of the circumstances of each case. This is confirmed by the wording of subsection 242(4) of the Labour Code, which outlines the broad discretion of an adjudicator with the words "may" and "do any other like thing" at paragraph (c).

[82] Second, I am satisfied the Adjudicator did not ignore Mr. Kouridakis' claim for loss of salary. As Mr. Kouridakis himself mentioned in his memorandum at paragraphs 59 and 60, the Adjudicator stated what Mr. Kouridakis sought at paragraphs 4 and 20 of the Redetermination Decision, *inter alia*, all lost salary and bonuses from the date of dismissal of June 14, 2016 to the date of rehearing on October 25, 2022.

[83] The Adjudicator explicitly rejected this claim at paragraph 20 of his Redetermination Decision, noting that "the implication was that Mr. Kouridakis was hired for a guaranteed indeterminate lifetime contract", a proposition he could not accept since, in his view, "an employer has the right to end an employee's work term or contract subject to appropriate compensation." In his memorandum, Mr. Kouridakis argued that this finding was simply not true, though he provided no authority to support his position. He added that the remedy he sought was exclusively based on paragraph 242(4)(a) of the Labour Code.

[84] Given my findings on paragraph 242(4)(a) of the Labor Code and the findings of the Federal Court of Appeal in *Hussey FCA* outlined above, I agree with the CIBC that Mr. Kouridakis has failed to show that the Adjudicator decided unreasonably by not awarding Mr. Kouridakis' claim as he phrased it, i.e., all lost of salary and bonuses from the date of dismissal of June 14, 2016 to the date of rehearing on October 25, 2022. Further, considering Mr. Kouridakis provided no case law to support his position that the Adjudicator's conclusion at paragraph 20 of his Redetermination Decision was not true, this argument cannot succeed.

[85] On a last note, I highlight that the Adjudicator did outline the principles he considered in order to determine what he defined as the indemnity due to Mr. Kouridakis, i.e., (1) the number

of years of service with the employer; (2) the position occupied at the time of dismissal; (3) the age of complainant; and (4) the circumstances surrounding the dismissal and the hiring. After analyzing these four principles, the Adjudicator expressed his award as a total of 18 months or one and a half years salary, which amounted to $60,000. As previously mentioned, expressing compensation in terms of a period of monthly pay is not necessarily an error (*Hussey FCA* at para 58). I am satisfied his reasoning bears the hallmarks of reasonableness in this regard.

[86] In summary, Mr. Kouridakis has not convinced me that the Adjudicator failed to exercise his jurisdiction and apply the law with respect to loss of salary, nor that he ignored his claim. As such, Mr. Kouridakis has not met his burden to show that the Adjudicator made a sufficiently central or significant shortcoming or flaw that would render the Redetermination Decision unreasonable (*Vavilov* at para 100).

(b) *Did The Adjudicator committed an unreasonable error of law when he concluded that Mr. Kouridakis is only entitled to a severance?*

[87] Mr. Kouridakis' second argument is that the Adjudicator committed a patently unreasonable error of law by poorly analyzing sections 240 and 242(3)(a) and (4) of the Labour Code, and by erroneously applying section 235 of the Labour Code, when he concluded that Mr. Kouridakis is only entitled to a severance. More specifically, Mr. Kouridakis submits that:

1) Even though the Adjudicator ruled on September 18, 2018, that Mr. Kouridakis' dismissal is/was unjust, he made a shocking observation at paragraph 4 of his decision to the effect that " ... the ending of complainant's employment with the bank was not unjust nor a dismissal for a justifiable cause ... ";
2) Section 235 of the Labour Code has no application in the case at bar;

3) Considering the Adjudicator's conclusion to the effect that Mr. Kouridakis was unjustly dismissed, he has no business to even consider section 235, nor does it have the jurisdiction to now adopt the position that " ... the ending of complainant's employment with the bank was not unjust nor a dismissal for justifiable cause ... "; and
4) The Adjudicator appears to be - by only awarding severance compensation in lieu of reinstatement - ignoring the provisions of paragraph 242(4)(a) of the Labour Code, but also to treat Mr. Kouridakis' complaint under section 240 of the Labour Code as a claim for compensation in the context of a wrongful dismissal action rather than as a complaint for unjust dismissal under the Code; therefore the Adjudicator used the wrong approach.

[88] The CIBC responds that the Adjudicator made none of the errors that Mr. Kouridakis alleges with respect to his interpretation of the Labour Code. The CIBC argues that while Mr. Kouridakis attacks the Adjudicator's characterization of his termination, the Adjudicator was merely summarizing his own ruling in the Decision on the merits – a ruling which this Court confirmed on judicial review (citing *Kouridakis 2019* at paras 30-33). According to the CIBC, that cannot be an error.

[89] In addition, the CIBC responds that Mr. Kouridakis' allegation that the Adjudicator only awarded severance compensation under section 235 of the Labour Code and failed to award compensation under section 242, is without merit. The CIBC outlines that:

1) The Adjudicator expressly wrote that he was not awarding severance under section 235 and it is disingenuous to suggest otherwise (citing the Redetermination Decision at paras 17-19, 21);
2) During the judicial review of the Decision on the merits, Mr. Kouridakis made this same argument, which was rejected by the Court (*Kouridakis 2019* at paras 88-92, 95);
3) In the Decision on the quantum, the Adjudicator reiterated that he was making his award under subsection 242(4) of the Labour Code; the suggestion that he did otherwise is without merit and not a fair reading of the Adjudicator's reasons; and
4) Mr. Kouridakis' true complaint is not that the Adjudicator misinterpreted the Labour Code, rather he simply disagrees with the quantum of the award; that disagreement does not render the Adjudicator's refusal to award the amount Mr. Kouridakis sought for loss of salary and loss of employment unreasonable.

[90] I agree with the CIBC that Mr. Kouridakis' second argument cannot succeed.

[91] First, as Justice Pamel outlined at paragraph 94 of *Kouridakis 2019*, I am cognizant that the "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 [Labour Code]: Wolf Lake First

Nation v Young (1997), 130 FTR 115 at paras 51 and 53 (TD).” However, I am satisfied the Adjudicator did not so limit the amount of indemnity.

[92] As previously stated, the Adjudicator did refer to subsection 242(4) of the Labour Code at the very beginning of his analysis on the section of his decision titled indemnity (see paragraph 17 of the Redetermination Decision *in fine*). Afterwards, the Adjudicator specifically stated that he was not limiting the compensation award to the severance pay provided in subsection 235(1) of the Labour Code, as it can be read from the following paragraphs of the Redetermination Decision:

> [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.
>
> [Emphasis in the original.]

[93] Finally, as highlighted by the CIBC, a variation of this argument was raised on the challenge of the Decision on the merits and was rejected by the Court (*Kouridakis 2019* at paras 88-92, 95). Justice Pamel was confident that the Adjudicator, in the Decision on the merits, meant that the next hearing would determine what compensation was owed under paragraph 242(4)(a) of the Labour Code on account of the rupturing, or “severance”, of the employer-

employee relationship, not in application of section 235 of the Labour Code. A plain reading of the First Decision at paragraphs 6 and 7 shows the Adjudicator was alive to Mr. Kouridakis' argument before Justice Pamel, and to the latter's findings in that respect:

> [6] … In paragraph 92 of his decision, Justice Pamel opined that the use of the word "*severance due* [sic] Mr. *Kouridakis*" was "*unfortunate*" although it was considered to have been used in the more colloquial sense as in the severing of the relationship between Mr. Kouridakis and CIBC. … Indeed, reference was had [*sic*] by the undersigned to *Black's Law Dictionary*, 5th edition. At page 1232, it defines "*severance pay*" as: "*Payment by an employer to an employee beyond his wages on termination of his employment, Generally, it is paid when the termination is not due to employee's fault* […]".
>
> [7] The amount of severance pay as stated, at paragraph of justice [*sic*] Pamel's decision, is not limited to the amount provided for in section 235 of the *Canada Labour Code*. …
>
> [Emphasis in the original.]

[94] Mr. Kouridakis has not convinced me that the Adjudicator somehow misapprehended Justice Pamel's findings in the Redetermination Decision. On the contrary, paragraphs 21 and 22 of the Redetermination Decision, reproduced above, show that the Adjudicator was cognizant that the amount due to Mr. Kouridakis was not limited by section 235 of the Labour Code.

(c) *Is The Adjudicator's analysis, reasoning, and outcome unreasonable as he ordered the CIBC to pay this total in satisfaction of all claims arising out of the termination?*

[95] Mr. Kouridakis' third argument is founded on his reading of paragraph 33 of the Redetermination Decision which states that "the [CIBC] 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." Mr. Kouridakis asserts that the Adjudicator did not

address and adjudicate on Mr. Kouridakis' claim for "loss of salary". Mr. Kouridakis therefore reiterates that the Adjudicator should have condemned the CIBC to pay damages for loss of salary, loss of employment, moral distress, and legal fees.

[96] This argument is essentially a reiteration of Mr. Kouridakis' first argument that the Adjudicator did not address and adjudicate on Mr. Kouridakis' claim for loss of salary. Considering the Court's prior conclusion that the Adjudicator did not ignore Mr. Kouridakis' claim, this argument cannot succeed.

(d) *Did The Adjudicator erred and misinterpreted the law and jurisprudence regarding the mitigation of damages?*

[97] Mr. Kouridakis' fourth argument relies on *Red Deer College v Michaels*, [1976] 2 SCR 324 [*Michaels*] and *Evans v Teamsters Local Union No. 31*, 2008 SCC 20 [*Evans*], which, he argues, established that the analysis of mitigation of damages is a two step process, namely:

> Step 1: **the employee** has to demonstrate that he/she has taken reasonable steps to secure employment.
>
> Step 2: if **the employer** maintains that the employee has not discharged the burden of proof, the employer has the duty and obligation to demonstrate that the employee: " ... either found or by exercise of proper industry in search, could have procured other employment of approximately similar kind reasonably adapted to his abilities. " (see paragraph 331-332 in *Michaels*).
>
> [Emphasis in the original.]

[98] Mr. Kouridakis argues that the teachings of the Supreme Court of Canada are such that it is not enough for the employer to argue that the employee did not make a reasonable effort: the employer also needs to demonstrate that the employee could have found replacement work if

he/she made reasonable efforts. On this, Mr. Kouridakis stresses that no one testified on behalf of the CIBC on the issue of mitigation of damages. Mr. Kouridakis then refers to the law on mitigation in the province of Quebec, which is inspired by *Michaels* and *Evans*, to submit that Civil Courts and the Administrative Tribunals have essentially maintained the position that the burden of proof rests on the shoulders of the employer, which burden is extremely demanding.

[99] As such, Mr. Kouridakis argues that assuming the finding to the effect that he did little to try and secure employment to be true, the Adjudicator was nevertheless legally obliged to ask himself: did the CIBC satisfy its burden of proof as required by the Supreme Court of Canada? According to him, by failing to tackle this question, the Adjudicator neglected to conduct a proper and rational analysis, and his conclusion, therefore, is patently unreasonable.

[100] Further, Mr. Kouridakis stresses that the authority referred to by the CIBC, i.e., a document prepared by Statistics Canada entitled "Annual Review of the Labour Market, 2016-2018", is totally silent on job availabilities, specifically, in the banking and/or credit card industry(ies), in the Montreal area. He adds that since the CIBC failed to prove that jobs were available and neglected to show Mr. Kouridakis, he would have landed a new job that matches his profile and experience had he applied. He submits that there is a total lack of evidence of "cause" and "effect".

[101] According to Mr. Kouridakis, the CIBC, therefore, should have been held liable for all the losses he sustained since his dismissal. At last, Mr. Kouridakis argues that the Adjudicator neglected the fact that he was counting on being re-instated and that he was finally denied re-instatement, in September 2019.

[102] The CIBC responds that Mr. Kouridakis' submission is fatally flawed, both legally and factually. Legally, the CIBC submits that Mr. Kouridakis' argument is based on a strained reading of the *Michaels* decision rejected by both this Court and the Federal Court of Appeal, including in *Bauer v Seaspan International*, 2004 FC 1441 at paras 16-18 [*Bauer FC*], aff'd 2005 FCA 292 at paras 8-9 [*Bauer FCA*]. Referring specifically to paragraph 17 of *Bauer FC*, the CIBC highlights that it is quite clear that the employer is not required to lead positive evidence of specific job positions before the mitigation rule can apply.

[103] Factually, the CIBC submits that Mr. Kouridakis is wrong when he suggests that the CIBC failed to lead evidence regarding the possibility that he could have obtained employment. The CIBC stresses that the Federal Court of Appeal recognized in *Bauer FCA* that cross-examination of the employee will often allow the employer to prove failure to mitigate (citing *Bauer FCA* at paras 12-13). The CIBC argues that this applies here as Mr. Kouridakis admitted, under cross-examination, that his job search consisted of three job applications over seven years, which, the CIBC contends, is woefully inadequate and a clear failure to mitigate. The CIBC also argues that as part of the Redetermination Decision hearing, its counsel produced, as part of its authorities, statistics of Canada's "Annual review of the labour market", published by authority of the Minister responsible for Statistics Canada for the years 2016, 2017 and 2018.

[104] In addition, the CIBC states that the Adjudicator correctly took judicial notice of the tight labour market in Montreal, and reasonably considered this historically-low unemployment as part of his analysis of mitigation. According to the CIBC, Mr. Kouridakis is wrong to claim that there is anything unusual or unreasonable in this approach as it is well-established that labour arbitrators can take judicial notice of labour market conditions (citing Ronald M. Snyder, *The*

2020 Annotated Canada Labour Code (Thomson Reuters, 2020) at 1364) The CIBC adds that it is similarly well-established that Statistics Canada documents and similar reports published by the provinces are a reliable basis from which to take judicial notice.

[105] The CIBC stresses that Mr. Kouridakis' suggestion that because he asked for reinstatement, he was not required to mitigate his damages, is an argument contrary to binding appellate jurisprudence. The CIBC refers to *Bauer FCA* at paragraphs 8-9 which rejected this very argument and held that mitigation is applicable even where an employee has sought reinstatement. The CIBC adds that the Federal Court of Appeal went further in those paragraphs, ruling that mitigation applies even if the employee is actually reinstated.

[106] Lastly, with respect to contributory fault, the CIBC highlights that Mr. Kouridakis does not advance any ground of review. Instead, his submissions consist of *ad hominem* attacks on the Adjudicator, and a complaint that he was treated "harshly."

[107] At the hearing, Mr. Kouridakis stressed that he did not agree with *Bauer FCA* and that since he was a resident of Quebec, the Court could look at the state of law on the mitigation of damages under the *Act respecting labour standards*, CQLR, c N-1.1 as it is consistent with the Supreme Court of Canada's jurisprudence. Responding to the CIBC's position on contributory fault, Mr. Kouridakis submits that it was unreasonable for the Adjudicator to punish him twice, i.e., by not reinstating him and by reducing the award. The Court noted that this argument was seemingly not in Mr. Kouridakis' memorandum and in any case, was not supported by an authority.

[108] I agree with the test on the burden of proof on mitigation of damages as outlined by the CIBC. Justice Rouleau addressed the issue at paragraph 18 of *Bauer FC* and the Federal Court of Appeal in *Bauer FCA* also addressed it at paragraph 9 and at paragraphs 10-13, discussing specifically the burden of proof. Therein, the Federal Court of Appeal recognised that an effective cross-examination can serve as evidence to establish that a dismissed employee failed to mitigate his damages.

[109] Ms. Moussa states in her two affidavits that, at the hearing for the Decision on the quantum held on December 18, 2019 before the Adjudicator, Mr. Kouridakis' testimony revealed that he had not made any real attempt to find other employment since his dismissal of June 14, 2016. Ms. Moussa further states that Mr. Kouridakis admitted that between his dismissal on June 14, 2016 and the hearing for the Decision on the quantum held on December 18, 2019, he had only applied for three positions, all in the winter of 2017, although he was only able to name two of the three positions. Ms. Moussa affirms that other than a tutoring job for two children between August and December 2018, which paid a nominal sum of $20 for each study session of 3 hours per day, 5 days a week, no further efforts were made by Mr. Kouridakis at finding employment and his sole revenue during this 3.5 year period was approximately $6,000 per child, or $12,000.

[110] Ms. Moussa also affirms that during the hearings for the Redetermination Decision starting in March 2022, Mr. Kouridakis's testimony revealed he made a single unsuccessful application for a job at a bank in that same month and that since then, Mr. Kouridakis spent no further time in job searches since he had been waiting to be reinstated at the CIBC.

[111] Ms. Moussa was not cross-examined on her affidavit and no contradictory evidence was presented (*Abdelrazik v Canada*, 2015 FC 548 at para 43 citing *Maldonado v Canada (Minister of Employment and Immigration)*, 1979 CanLII 4098 (FCA), [1980] 2 FC 302; *Villarroel v Canada (Minister of Employment and Immigration)*, [1979] FCJ No 210 (CA); *Thind v Canada (Minister of Employment and Immigration)*, [1983] FCJ No 939 (CA)).

[112] Thus, I am satisfied that Mr. Kouridakis' testimony before the Adjudicator, as outlined by Ms. Moussa, effectively served as evidence on his mitigation of damages, or lack thereof, and that it was reasonable for the Adjudicator to consider Mr. Kouridakis' admissions in his assessment.

[113] Moreover, I agree with the CIBC that it was reasonable for the Adjudicator to take judicial notice of the labour market in Montreal, based on his personal experience and the Statistics Canada labour market document that the CIBC filed in evidence, given that these facts were "capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy" (*R v Spence*, 2005 SCC 71 at para 53 citing *R v Find*, 2001 SCC 32 at para 48). Lastly, with respect to Mr. Kouridakis' assertion that he was not required to mitigate his damages as he sought reinstatement, I also agree with the CIBC that *Bauer FCA* at paragraph 9 effectively rejected this argument.

(e) *Did The Adjudicator act unreasonably in his analysis, reasoning and findings with respect to damages for mental distress and legal fees?*

[114] Mr. Kouridakis' last argument is that the Adjudicator's analysis, reasoning and findings with respect to damages for mental distress and legal fees, is not sound, logical or rational, and

irreconcilable with the intent and purpose of paragraph 242(4)(c) of the Labour Code and the "make whole" approach.

[115] With respect to mental distress, Mr. Kouridakis relies on *Wallace v United Grain Growers Ltd*, [1997] 3 SCR 701 [*Wallace*], in which he argues the Supreme Court of Canada refers to bad faith conduct or unfair dealing, but also affirms that a dismissed employee is entitled to moral damages if he/she was subject to humiliation, embarrassment, and sustained damages to his/her self worth and self esteem. He also points to the jurisprudence of the Administrative Labour Tribunal of Quebec according to which a wrongfully dismissed employee does not need to prove bad faith to be entitled to moral damages (citing *Gaudette et Commission de la construction du Québec*, 2017 QCTAT 4611, available in French only, and *Deshaies et Médias Transcontinental SENC*, 2014 QCCRT 431).

[116] Further, Mr. Kouridakis refers to 11 events, which he argues, show that the Adjudicator should have awarded damages for mental distress as Mr. Kouridakis proved bad faith conduct, unfair dealing, damages to his self worth and abusive behaviour on the part of the CIBC.

[117] With respect to legal fees, Mr. Kouridakis first argues that the Labour Code does not prescribe or set out that legal fees are awarded in extreme situations. He adds that *Banca Nazionale Del Lavoro of Canada Ltd v Lee-Shanok* (1988), 87 NR 178, [1988] FCJ No 594 (CA) (QL) [*Banca Nazionale*], a decision referred to by the Adjudicator: a) does not refer to or set aside the judgment rendered by the same court in *Canadian Imperial Bank of Commerce v Boisvert*, 1986 CanLII 6862 (FCA), [which decision reiterates the importance and application of

the “make whole” approach]; b) refers with approval to *Slaight Communications Inc v Davidson*, 1985 CanLII 5561 (FCA); and c) confirms that the Adjudicator has the power to award legal fees based on paragraph 242(4)(c) of the Labour Code.

[118] Further, Mr. Kouridakis refers this Court to *Northwestel Mobility Inc v Robertson*, 2004 FC 1311, which, he argues, supports the notion that the Adjudicator has the power to award damages for legal fees based on the language alone of paragraph 242(4)(c) of the Labour Code. He also refers to other jurisprudence where the courts and/or the Adjudicator applied the “make whole” approach to award legal fees (including *Swindler v Saskatoon Tribal Council (STC) Urban First Nations Services lnc*, [2003] C.L.A.D. No. 345; *Eskasoni Band v Waldman*, 2001 FCT 867).

[119] Mr. Kouridakis then argues that his claim for legal fees, which he submits amounted to nearly $100,000, is comprised of two components, namely: i) the reimbursement of fees already paid and ii) fees to be paid in the event of success. He stresses that:

1) The Adjudicator overlooked the mandates for legal services he filed;
2) The CIBC did not challenge the amount, nor the mandates or proof of payment;
3) The Adjudicator’s observation to the effect that the CIBC would be condemned to pay a great deal more in terms of legal fees if there is evidence of reprehensible conduct is perhaps one reason to award legal fees;
4) Legal fees should also be and can be awarded in situations where the dispute is protracted (i.e. lengthy trials and hearings held in the Federal Court) and in this case, the hearing on the merit of the complaint lasted eight days; the hearing(s)

on the quantum lasted two days and a half; the hearing(s) in the Federal Court lasted two days, to date; and

5) The "make whole" approach entitles an applicant to legal fees as the spirit and intent of paragraphs 242(4)(a) and (c) of the Labour Code is to protect wrongfully dismissed employees.

[120] The CIBC first responds that the Adjudicator reasonably rejected Mr. Kouridakis' mental distress claim as being insufficiently supported by any medical evidence, as the only evidence proffered by Mr. Kouridakis suggested that any health problems were caused by "burnout" of his own making. The CIBC submits that there was thus no proof of damages, and the evidence of causality had nothing to do with CIBC or its termination of Mr. Kouridakis. The CIBC highlights that Mr. Kouridakis does not advance any argument against this finding of fact as part of his application for judicial review: his factum does not mention it. Instead, the CIBC stresses that Mr. Kouridakis simply reiterates his allegations of bad faith, which are contrary to the factual findings of the Adjudicator in both the Redetermination Decision and the Decision on the merits. As such, the CIBC submits that once again, Mr. Kouridakis attempts to overturn facts which are *res judicata*.

[121] Second, with regard to the legal fees claim, the CIBC argues that *Banca Nazionale* has been followed many times by arbitrators and by this Court. Accordingly, the CIBC submits it is now well-established in the jurisprudence that awarding 100% of a party's legal costs is an extraordinary remedy, one that is granted only in exceptional cases involving reprehensible conduct, either during litigation or otherwise (citing *Fraser v Bank of Nova Scotia*, 2001 FCA

267 at paras 6-7.) The CIBC further submits that there is no such reprehensible conduct here as the Adjudicator has repeatedly found that there was no bad faith conduct on the part of CIBC.

[122] Lastly, the CIBC stresses that (1) the Adjudicator found that legal fees for the bulk of this file (including the 8-day hearing which preceded the Determination on the Merits) are *res judicata* in light of this Court's cost award in 2019, which awarded costs in favour of the CIBC for the first phase of the litigation (citing *Kouridakis 2019* at para 98 and the Redetermination Decision at para 16); (2) Mr. Kouridakis has not shown that the Adjudicator acted unreasonably in coming to this conclusion, he simply repeated the submissions he made already and expresses disagreement with the Adjudicator's rejection of those submissions; and (3) it is not even clear what amount is owed by Mr. Kouridakis to his counsel, an uncertainty which appears on the face of the documents Mr. Kouridakis relies on, and provides a further reason why it would be unreasonable to accept his request for judicial review.

[123] In regards to damages for mental distress, I agree that Mr. Kouridakis does not challenge the Adjudicator's conclusion regarding the medical evidence, provided by his doctor. It was thus reasonable for the Adjudicator to conclude the condition described was of Mr. Kouridakis' own making and did not support claims of mental distress. This conclusion stands.

[124] Furthermore, in relation to Mr. Kouridakis' other arguments on mental distress and legal fees, the CIBC refers to paragraphs 46 to 49 of the Decision on the merits to argue that the Adjudicator made factual findings on Mr. Kouridakis' allegations of bad faith on behalf of the CIBC. I did not see those findings. Rather, in these paragraphs the Adjudicator assessed whether

reinstatement was an appropriate remedy given the manager-employee relationship and Mr. Kouridakis' behavior leading to his dismissal.

[125] The Adjudicator concluded that reinstatement was untenable and that since Mr. Kouridakis' dismissal was unjust, he was entitled to severance compensation. I did not see, in those paragraphs, any discussion of the CIBC through the prism of bad faith, abuse, malice or vexatious behavior. Likewise, I did not find any conclusions on the CIBC's behavior through this prism in *Kouridakis 2019*, which would lead to the factual findings being *res judicata*.

[126] However, I agree that the Adjudicator did make such findings at paragraph 20 of its First Decision, namely that "there was no evidence of bad faith, abuse, malice or vexatious behavior demonstrated in the actions of the [CIBC] attendant to the dismissal of Mr. Kouridakis". Mr. Kouridakis challenged this conclusion in *Kouridakis 2021*, but, as outlined above, the Court allowed the judicial review on other grounds.

[127] That said, Mr. Kouridakis' argument that the Adjudicator should have awarded damages for mental distress and his claim for legal fees based on the CIBC's behaviour is an invitation to reassess the evidence that was before the Adjudicator as well as his factual findings. This is not appropriate in the context of a judicial review and Mr. Kouridakis has not shown that the Adjudicator "fundamentally misapprehended or failed to account for the evidence before [him]" (*Vavilov* at paras 125-126).

[128] On a last note, given my findings outlined above, I will again decline Mr. Kouridakis' invitation to rely on the Quebec legislation and case law.

[129] In summary, Mr. Kouridakis raised no reviewable error on the Adjudicator's assessment and findings of Mr. Kouridakis' claims for moral damages and legal fees. Therefore, the Court will not interfere with the Adjudicator's conclusions.

(3) The CIBC's Arguments in support of its Application

(a) *Did The Adjudicator fatally failed to explain why he departed from the First Decision?*

[130] The CIBC first submits that in *Kouridakis 2021*, this Court was seeking a more detailed explanation describing how the Adjudicator would have arrived at the conclusion that the proper compensation was $10,250. According to the CIBC, this was to allow the Court to "connect the proverbial dots" (*Kouridakis 2021* at para 57) rather than resorting to buttressing the Adjudicator's reasons with the CIBC's arguments or conducting its own research and analysis and comparing its results with the Adjudicator's decision. The CIBC thus submits that *Kouridakis 2021* represents one of the important legal constraints which is relevant to understanding whether the Adjudicator's Redetermination Decision was reasonable (citing *Canada (Citizenship and Immigration) v Yansane*, 2017 FCA 48 at para 27 [*Yansane*]).

[131] As such, the CIBC argues that even though the Court did not raise any errors in law nor indicate that the conclusion drawn by the Adjudicator was not justified in light of the legal and factual constraints that bear on the decision, at any point during *Kouridakis 2021*, the

Adjudicator seemed to believe that *Kouridakis 2021* required him to arrive at a different conclusion from the Decision on the quantum, as a result of which he made different findings at virtually every stage of the analysis.

[132] At the hearing, the CIBC stressed that the factual findings consistently made by the Adjudicator were a constraint that informed his reasoning process, and that his unexplained departure from his prior conclusions were arbitrary and unreasonable given that the evidentiary record was essentially the same as in the Decision on the quantum (citing *Vavilov* at para 125).

[133] In response, Mr. Kouridakis essentially submits that the Adjudicator did not misunderstand *Kouridakis 2021*: rather, he proceeded with a "new re-determination" – although it is Mr. Kouridakis' view that the Adjudicator failed to exercise its jurisdiction and to apply the law – , and he was by no means bound by his initial findings, rendered in January 2020. Mr. Kouridakis adds that the situation between 2022 and 2023 was different. In 2022, the Adjudicator urged the parties, during the trial, to address a number of questions to better understand their respective positions; and in any event, the Adjudicator explains the different results, but his analysis and conclusions are unreasonable and not rational (referring to Mr. Kouridakis' memorandum in the T-275-23 file).

[134] At the hearing, the Court discussed with the CIBC on the precedential value of the Adjudicator's Decision on the quantum, namely if the CIBC's argument was that the Adjudicator was bound by his First Decision and if not, was he obligated to justify a departure from this First Decision. The CIBC conceded that if the Adjudicator was not bound by his First Decision, then

his Redetermination Decision would not necessarily be unreasonable and only its second argument on legal fees, outlined below, would stand.

[135] The CIBC proved unconvincing in the defence of its argument that the Adjudicator was in some sense bound by his First Decision and obligated to explain and justify any different outcome. The CIBC did not provide authorities to support this, and I am not convinced the Adjudicator, in the circumstances of this matter, was constrained by his previous conclusions, or that he had to so justify or explain any different outcome.

[136] On the contrary, a simple reading of the judgment in *Kouridakis 2021* confirms no instructions or directions, explicit or implicit, were included to restrain the Adjudicator's review; it simply returned the matter for a new determination. The sole impact of the Court's judgment was thus to extinguish the First Decision. As the Federal Court of Appeal recently reasserted: "*general* references to reasons in a formal judgment do not form part of the judgment itself so as to give rise to a right of appeal based on the reasons" (*Canada (Attorney General) v Benjamin Moore & Co*, 2022 FCA 194 at para 19 citing *Yansane* at para 25) [emphasis in the original.]. In this case, *Kouridakis 2021*'s judgment did not refer to the reasons.

[137] Only instructions explicitly stated in a judgment bind the subsequent decision-maker (*Yansane* at para 19). I am satisfied that it was thus open to the Adjudicator to conduct his assessment and to reach different conclusions (*Ouellet v Canada (Attorney General)*, 2017 FC 586 at para 28; see also *Burton v Canada (Citizenship and Immigration)*, 2014 FC 910 at para 30 citing *Zacarias v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1155 at para

3; *Miah v Canada (Minister of Citizenship and Immigration)*, 2007 FC 2005 at para 8; *Lee v Canada (Minister of Citizenship and Immigration*, 2003 FCT 743, [2003] FCJ No 977 at para 11).

(b) *Did The Adjudicator unreasonably award $7,200 in legal fees?*

[138] Second, the CIBC outlines that while legal fees were denied entirely in the Determination of the quantum, the Adjudicator awarded Mr. Kouridakis $7,200 in legal fees in the Redetermination Decision, representing 20% of the gross amount collected in this matter by way of judgment. The CIBC argues that this conclusion is manifestly incompatible with the current state of the law regarding the award of legal fees (solicitor-client fees) and the evidence, or lack thereof, before the Adjudicator (citing *Randhawa* at paras 59-65).

[139] More specifically, the CIBC submits that insufficient reasons were provided for why legal fees were awarded in the Redetermination Decision, when the Adjudicator determined that no legal fees should have been awarded in the Decision on the quantum. According to the CIBC, where such extraordinary awards are made, the decision-maker must explain the basis for doing so (*Randhawa* at para 61).

[140] The CIBC then highlights that while *Banca Nazionale* is an administrative-level decision, its approach to awarding legal fees under section 240 of the Labour Code has been expressly approved and adopted by this Court in *Transport St-Lambert v Filion*, 2010 FC 100 at paras 57-60.

[141] As such, the CIBC argues that solicitor-client costs are ordered "only in rare and exceptional circumstances to mark the court's disapproval of the parties' conduct in the litigation" (*Banca Nazionale* at p 13; *National Bank of Canada v Lajoie*, 2007 FC 1130 at para 41 [*Lajoie*]). The CIBC adds there must be some degree of reprehensible conduct for such an award to be justifiable, such as bad faith, abuse, malice or vexatious behaviour, dismissal which proves to be reckless, capricious, unfounded or abusive or the employer's delaying tactics during the hearing (*Lajoie* at para 41; *Wallace* at para 103).

[142] Therefore, the CIBC submits that in the absence of exceptional circumstances, the Adjudicator is not justified in making an order for legal fees, a legal principle that was clearly outlined by the Adjudicator in the Decision on the quantum at paras 21-23.

[143] Additionally, the CIBC stresses that:

1) The complete lack of evidence of abuse, malice, bad faith, recklessness, whim, or tactics of undue delay on behalf of the CIBC was expressly noted by the Adjudicator in his first Decision on the quantum at paragraph 24;
2) In the Redetermination Decision, there continued to be no evidence whatsoever of any reprehensible conduct on the part of the CIBC, which was once again noted by the Adjudicator at paragraph 13 of this decision;
3) The Adjudicator also noted that the ending of Mr. Kouridakis' employment was not unjust nor a dismissal for justifiable cause based on heinous acts, but rather an administrative decision done in the interest of maintaining managerial

authority and harmony in the workplace at paragraphs 4-5, 17, as it was noted in *Kouridakis 2021* at paragraph 17;

4) The evidentiary record before the Adjudicator on Redetermination Decision was the same as that before him on the Decision of the quantum and as that before this Court; the same facts compelled the same conclusion;
5) The principles established in *Banca Nazionale* and subsequently endorsed by this Court were a key legal constraint on the Adjudicator's ability to award legal costs; he acted unreasonably by failing to follow that constraint; and
6) In awarding legal fees to Mr. Kouridakis, the Adjudicator failed to account for Mr. Kouridakis' unreasonable behavior during the hearing for the Redetermination Decision.

[144] In response, Mr. Kouridakis essentially argues that the CIBC's submission regarding legal fees has no merit and should be dismissed. Moreover, he reiterates his submissions made in the T-275-23 file, notably that (1) the Adjudicator's analysis and outcome are not consistent with the law/"make whole" approach, the evidence and the case law; and (2) even though the CIBC is not contesting the Adjudicator's findings as regards to Mr. Kouridakis' claim for moral damages, he asserts his position that the Adjudicator should have awarded damages for mental distress given the circumstances.

[145] As outlined above, adjudicators have a broad discretion under subsection 242(4) of the Labour Code, which encompasses their jurisdiction to award legal fees (*Hussey FC* at paras 72, 79 citing *Banca Nazionale*; *Randhawa* at paras 54-58). As such, the approach adopted to assess

legal fees and the quantum ultimately ordered is also part of an adjudicator' discretion, as long as his/her reasons provide a transparent and intelligible justification for the result (*Vavilov* at para 136; see also *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 60).

[146] That said, when an award is made on the solicitor-client basis, *Banca Nazionale* provides that "[a]n 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." (*Banca Nazionale* at p 12) Accordingly, an adjudicator making an award on this basis must explain the basis for doing so following the principles established in *Banca Nazionale*, and "the failure to offer such an explanation can constitute a reversible error" (*Randhawa* at para 61 citing *Alberta Wheat Pool v Konevsky*, [1990] FCJ No 877 (CA); *First Nation Sipekne'katik v Paul*, 2016 FC 769 at paras 97-101; *Fraser v Bank of Nova Scotia (2000)*, 2000 CanLII 15724 (FC), 186 FTR 225, aff'd 2001 FCA 267).

[147] In this case, the Adjudicator indicated from the onset the framework provided in *Banca Nazionale*, as he had done in the First Decision. He then found that there was no reprehensible conduct on behalf of the CIBC which would justify awarding Mr. Kouridakis' claim for legal fees in its entirety based on that framework. However, given the length of the hearings, the Adjudicator subsequently interpreted the reasoning of another adjudicator in *Bank of Canada v Lafleche*, D.T.E. 2013T268, paragraph 56, to refer to the "make whole" approach, and added concerns about equity to award legal fees.

[148] The Adjudicator then analyzed the initial mandate Mr. Kouridakis had with his former counsel, noted that the initial deposit of $5,000 was transferred to Mr. Kouridakis' current counsel, and found that Mr. Kouridakis effectively committed himself to pay 20% of the gross amount collected based upon the outcome of the litigation of his complaint. The Adjudicator indicated that what was subsequently negotiated with regard to reviews did not fall within the purview of his analysis. In point of fact, the Adjudicator found that Mr. Kouridakis' application for judicial review of the Decision on the merits was dismissed with costs of $1,000 against the complainant, thus, for the first eight days of hearing no fees were due. Ultimately, the Adjudicator concluded that the two and one-third (2 1/3) days of hearing on the redetermination of the quantum was, at best, subject to the 20% of the amount granted as per the fee mandate.

[149] I am satisfied that the Adjudicator's analysis provides a transparent and intelligible justification regarding his award for compensation in the form of legal fees. The Adjudicator reasonably first referred to the *Banca Nazionale*'s framework applicable to solicitor-client costs, but found the necessary reprehensive conduct had not been made out. The evidence before me does not show this conclusion to be unreasonable.

[150] Even though Mr. Kouridakis sought to apply the "make whole" approach to have all his legal fees reimbursed, given the Adjudicator's broad discretion, it was indeed reasonable for the latter to ultimately and alternatively award legal fees under this principle, and equity, and to award the amount he fixed based on Mr. Kouridakis' mandates for legal services.

[151] In summary, the CIBC has not convinced me that the Adjudicator made a reviewable error in his assessment and award of legal fees.

(c) *Should the Court exercise its discretion to decide the matter on judicial review?*

[152] Lastly, the CIBC notes that this matter has been the subject of two judicial reviews, both of which were instituted by Mr. Kouridakis and three arbitral decisions. Mr. Kouridakis has since instituted a third judicial review, i.e., T-275-23. According to the CIBC, in light of the foregoing, it is likely that this matter will not be brought to a close without this Court's intervention.

[153] As such, in the interest of proportionality, the administration of judicial resources, and in order to avoid incurring further legal fees in connection with this matter, the CIBC respectfully requests that this Court exercise its discretion to decide the matter on judicial review and not refer it back to the Adjudicator for a fourth decision.

[154] Mr. Kouridakis seemingly does not oppose the CIBC's position and invites this Court to (a) render the conclusions which the Adjudicator should have rendered; and/or (b) refer back to a new Adjudicator the matter for new re-determination in accordance with directions from this Court.

[155] At the hearing, the CIBC highlighted that the criteria mentioned in paragraph 142 of *Vavilov*, namely concern for delay, fairness to the parties, urgency of providing a resolution to the dispute and costs to the parties, all support the conclusion that this Court should exercise its

discretion to decide the matter on judicial review. It stressed that in its view, there was only one particular outcome with respect to legal fees.

[156] Given my findings in both judicial review applications, it is unnecessary for me to address these issues related to remedies.

V. Conclusion

[157] For the reasons outlined above, both applications for judicial review will be dismissed.

[158] Considering the results, each party will bear its own costs (*Hussey FC* at para 81).

JUDGMENT in T-275-23 and T-289-23

THIS COURT'S JUDGMENT is that:

1. Paragraphs 14, 16, 18, 21, 25, 27-28, 30-31, 34 -39, 43-46, 48, 50-51, 53, 55, 57, and 58-62 of Mr. Kouridakis' affidavit in the T-275-23 file are inadmissible and are struck.
2. Paragraphs 8-14, 16, 22, and 24-26 of Mr. Kouridakis' affidavit in the T-289-23 file are inadmissible and are struck.
3. Exhibits Q-1 to Q-30 found in the applicant's record of the T-275-23 file are inadmissible and are struck.
4. Exhibits Q-1 to Q-32 found in the respondent's record of the T-289-23 file are inadmissible and are struck.
5. Mr. Kouridakis is denied leave to amend his affidavit.
6. The Application for judicial review in file T-275-23 is dismissed.
7. The Application for judicial review in file T-289-23 is dismissed.
8. Each party bears its own costs.

"Martine St-Louis"
Associate Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-275-23
STYLE OF CAUSE:	GEORGES KOURIDAKIS v CANADIAN IMPERIAL BANK OF COMMERCE
AND DOCKET:	T-289-23
STYLE OF CAUSE:	CANADIAN IMPERIAL BANK OF COMMERCE v GEORGES KOURIDAKIS
PLACE OF HEARING:	MONTREAL, QC
DATE OF HEARING:	MARCH 26, 2024
JUDGMENT AND REASONS:	ST-LOUIS ACJ.
DATED:	JANUARY 13, 2025

APPEARANCES:

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