

IN THE MATTER OF: The *Canada Labour Code* Part III, Division XIV (Unjust  
Dismissal)

- and -

A Complaint of Unjust Dismissal under s. 240(1)

BETWEEN:

Kelsey B.B. Crawford

the Complainant

-and-

Canadian Imperial Bank of Commerce (CIBC)

the Employer

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# DECISION

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BEFORE: J.A. MacLellan, Adjudicator

HEARINGS HELD AT HALIFAX ON :

September 18, 19, 2018; March 8, 9 & 10, 2019; July 22, 2020

WRITTEN SUBMISSIONS FILED:

August 13, 2020, September 12, 2020, Reply September 28, 2020

REPRESENTING THE COMPLAINANT: Nancy Elliott

REPRESENTING THE EMPLOYER: Grant Machum and Dante Manna

DATE OF DECISION: November 23, 2020

## OVERVIEW

[1] The complainant was first hired at the CIBC Telephone Banking Centre in Halifax on July 29, 2010 to the position of Financial Representative. She was appointed to the position of Team Leader on April 13, 2013.

As a result of a telephone call with a customer on November 7, 2016 she was terminated on November 9, 2016.

The complainant admits that the comments and actions during the telephone call were not appropriate, but when placed in the context of the workplace and her personal circumstances, her actions did not warrant dismissal.

CIBC takes the position that the complainant's conduct contained multiple violations of the CIBC Code of Conduct. Also, as a result her conduct on the telephone call was inconsistent with her continuing as a Team Leader at the contact centre.

## THE COMPLAINT

[2] On January 24, 2016 the complainant filed a complaint of unjust dismissal pursuant to s. 240 of the *Canada Labour Code*, Part III, (the "*Code*") alleging that she was unjustly dismissed from her employment with CIBC on November 9, 2016.

As a result of the complaint, Mark Little, Inspector, wrote to CIBC requesting a written statement giving reasons for the dismissal.

By letter dated March 31, 2017 Stacey Andrus, Sr. Employee Relations Consultant, replied to the request.

The first three paragraphs of the letter deal with the matter of jurisdiction. That matter was addressed in a separate decision, wherein I decided that I did have jurisdiction to hear this matter on the merits.

The reasons for the dismissal begin on the fourth paragraph of the letter. The entire letter is reproduced as follows:



Stacy Andrus  
Sr. Employee Relations Consultant  
Employee Relations  
150 York Street, 12<sup>th</sup> Floor  
Toronto, Ontario M5H 3S5

Tel: (416) 307-3146  
Fax: (416) 980-7115  
Email: stacy.andrus@cibc.com

**SENT VIA email: mark.little@labour-travail.gc.ca**

**March 31, 2017**

Employment and Social Development Canada  
PO Box/C.P. 5003  
Moncton, NB  
E1C 8R5

Attention: Mark Little, Inspector

**Re: Kelsey Crawford Unjust Dismissal Complaint- File # M012C00344**

Your letter dated February 17, 2016, which was received on March 7, 2017, has been forwarded to my office for review and response.

As a preliminary matter, CIBC submits that there is no jurisdiction to hear Ms. Crawford's complaint because she was a manager. At the time of her dismissal, Ms. Crawford was employed by CIBC as a Team Leader, at our Halifax Contact Centre location. In this role, she managed 12 Financial Service Representatives and was responsible for addressing escalated customer concerns. Pursuant to section 167(3) of the Code, the unjust dismissal provisions of the Code do not apply to managers. Therefore, CIBC respectfully submits that there is no jurisdiction to hear or decide this complaint and it should be dismissed on this basis.

Notwithstanding CIBC's view that there is no jurisdiction to hear or decide this complaint, CIBC submits that the complaint should be dismissed in any event because Ms. Crawford engaged in behaviour that warranted her dismissal for just cause. Ms. Crawford's employment was terminated for just cause on November 9, 2016. The reasons for Ms. Crawford's dismissal are as follows.

Prior to her dismissal, Ms. Crawford had a history of behaviour and performance issues that resulted in disciplinary warning letters. The most recent occurrence prior to her dismissal involved multiple breaches of confidentiality as well as interference with CIBC's investigation into allegations she brought forward concerning another CIBC employee. As a result, she received a written warning letter that reminded her of the importance of following CIBC's Code of Conduct and informed her that any further breaches would result in disciplinary action up to and including termination without notice or payment in lieu of notice. These issues arose in January 2016 and the warning letter was delivered to Ms. Crawford on or about July 26, 2016 following her return from a leave of absence.

The culminating incident occurred on November 7, 2016, when Ms. Crawford was unprofessional and disrespectful toward a customer. During her telephone conversation with the customer, Ms. Crawford was argumentative and combative, failed to address the customer's concerns in an appropriate manner and several

times referred to the customer in a demeaning manner (while the customer was on hold) within earshot of her co-workers. After more than 20 minutes, Ms. Crawford offered to look deeper into the customer's concerns, ended the call and then openly described the customer using a vulgar expletive for her co-workers to hear. The co-workers included management-level peers as well as Financial Service Representatives who reported to her and who Ms. Crawford is expected to act as a role model of appropriate workplace behaviour.

Ms. Crawford's behaviour contravened both her express and implied duties as a CIBC employee and people manager, including those set out in CIBC's Code of Conduct and her Employment Agreement. Moreover, Ms. Crawford's actions exposed CIBC to reputational risks and resulted in an irreparable loss of trust and confidence.

For these reasons, CIBC respectfully submits that there is no jurisdiction to hear or decide this complaint and it should be dismissed on that basis. In the alternative, CIBC submits that Ms. Crawford's dismissal was not unjust and her complaint should be dismissed in any event.

Yours truly,

Stacy Andrus  
Senior Consultant, Employee Relations

In support of the reasons for dismissal, CIBC called three witnesses:

Deborah Grant, Director Telephone Banking in Halifax; Joseph Voltan, Senior Manager, and Youssef Ramia, Senior Manager.

The complainant called two witnesses: the complainant, Kelsey Crawford; Dr. Karen Anderson, the complainant's family doctor.

### THE ISSUES

[3] The parties agree that the issues to be determined are:

- a) Was there just cause for dismissal under s. 240(1) of the *Code*? And
- b) If not, what is the appropriate remedy?

Before returning to the main issue it must be determined whether the complainant's medical doctor, Dr. Anderson's medical testimony and reports are admissible. If they are admissible, what weight, if any, should be given to this evidence?

During the prior hearing and before hearing from Dr. Anderson I was advised by CIBC that they are objecting to the medical evidence and report. They also advised that they would be supplying subsequent written submissions.

At that time I made the decision that I would allow the evidence to be received and would determine, after receiving the written submissions, as to whether the medical evidence and report would be admissible and what, if any, weight is to be given to that evidence.

Subsequent written submissions were made concerning this evidence and this is my decision.

[4] The doctor's report to which there is objection is dated June 19, 2018 and reproduced as follows:



Family  
Practice  
Associates

L.A. MARSH, MD  
G. MARSHALL, MD  
K. SUBHANI, MD  
K. KITAMURA, MD  
N. BUCKLEY, MD

E. BAXTER, MD  
V. MITCHELL, MD  
M. STENDER, MD  
K. GLAZEBROOK, MD  
D. SWINAMER, MD

O. HAYNE, MD  
D. ALEXANDER, MD  
R. RETSON, DCH  
K. ANDERSON, MD  
C. DRYSDALE-BUHR, MD

C. CONTER, MD  
A.B. HUMPHREY, MD  
D. TILLEY, MD  
M. O'NEILL, MD  
M.E. TRAGER, MD

Dr. Karen Anderson  
6155 North Street  
Halifax, NS B3K 5R3

Phone: (902) 453-3511  
Fax: (902) 454-9010

June 19, 2018

To whom it may concern,

Re: Kelsey Crawford

I have been the family physician of Kelsey since she was a girl. I have been seeing her regularly and have documented notes about her physical abuse by her ex-boyfriend. This man worked at CIBC with Kelsey. Kelsey did charge him with assault and he did eventually plead guilty.

Her place of work was nonsupportive and despite knowing that this man had threatened her life, they had her working with him.

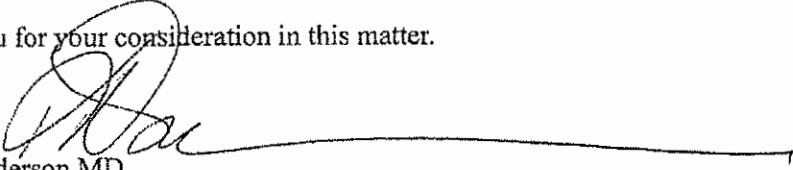
Kelsey was under significant stress. She was eventually fired from CIBC. This has been recorded on her ROE and makes it impossible for her to get anything but a minimum wage job.

From the information given to me by Kelsey and the circumstances under which she continued to work, I believe that CIBC was in the wrong, were remiss in supporting an employee who was in a very difficult situation, they aggravated the stress that she was under and now they have completely paralyzed her ability to recover and move on financially from this situation.

If further chart documents are required, I would be willing to do this.

Thank you for your consideration in this matter.

Sincerely,

  
Karen Anderson MD

The complainant argues that the medical evidence and report of Dr. Anderson should be admissible for the following reasons:

Pursuant to ss. 242(2)(c) of the *Code* an adjudicator hearing a claim of unjust dismissal has the same powers to admit evidence as conferred on the Canada Industrial Labour Relations Board under para. 16(c)

...to receive and accept such evidence and information on oath, affidavit or otherwise, as the Board, in its discretion, sees fit, whether admissible in a court of law or not.

The complainant further argues that even without such discretion, it submits that Dr. Anderson's testimony would be admissible in a court of law on the basis of it being "participant expert" testimony. It refers to the term "participant expert" that was first coined in *Westerhof v Gee Estate*, 2015 ONCA 206, where the court stated, at para. 60,

...a witness with special skill, knowledge, training, or experience who has not been engaged by or on behalf of a party to the litigation [who] may give opinion evidence for the truth of its contents without complying with rule 53.03 (concerning the provision and content of an expert report) where:

- the opinion to be given is based on the witness's observation of or participation in the events at issue; and
- the witness formed the opinion to be given as part of the ordinary exercise of his or her skill, knowledge, training and experience while observing or participating in such events.

The complainant states that an expert differs from a litigation expert (or independent expert) who is engaged to form an opinion for the purpose of litigation



and who must comply with the procedural requirements of providing an expert report.

I am also referred to *Kaul v The Queen*, 2017 TCC 55, where Chief Justice Rossiter described a participant expert as being, “a unique hybrid” at paras. 29 and 30,

[29] A participant expert may be described as a witness with expertise who was involved in the underlying events that gave rise to the litigation, but in contrast to a litigation expert, was not involved for the purpose of, or in contemplation of any litigation. These experts may express opinions that were formed based on their observation of or participation in the underlying events as part of the ordinary exercise of their skill, knowledge, training and experience: *Westerhof*, at para. 60. These experts are a unique hybrid in that they can attest to both “facts”, which they observed or examined while participating in the underlying events, and “opinions”, which they formed during their participation based on their expertise: *Westerhof*, at paras. 61, 67 to 70. While it is recommended that these witnesses be properly qualified as experts, there is no rule mandating such: *Kon Construction*, at para. 37.

[30] The most salient example of this category are treating physicians. They are allowed to provide their treatment opinions in court without complying with the court’s procedural rules dealing with expert evidence: *Westerhof*. Such evidence is usually unchallenged because these witnesses are essentially “witnesses of fact” to the extent that they can testify to “facts” of their involvement, as well as the “opinions that went to the exercise of [their] judgment”: *Marchand v The Public General Hospital of Chatham* (2000), 2000 CanLII 16946 (ON CA), 51 OR (3d) 97, [2000] OJ No 4428 at para. 120 (“*Marchand*”); also see *Westerhof* at paras. 67-70.

Justice Rossiter also considered how a participant expert fit into the test of independence and impartiality set out in *White Burgess Langille Inman v Abbott and Haliburton Co.*, 2015 SCC 23 as set out in para. 114,

[114] Second, in respect to the test of independence and impartiality as set out in *White Burgess*, an analysis that should be conducted at the qualified expert stage in *Mohan*, I emphasize that independence and impartiality must be viewed in relation to the opinion testimony that the witness proposes to give. For a witness proposed to be called as a participant expert, the witness should be independent and impartial at the time he or she formed the original opinion during the exercise of his or her expertise in the ordinary course. For a witness proposed to be called as a litigation or independent expert for the purpose of litigation, the witness should be independent and impartial in respect to the litigation opinions that he or she formed in connection with a litigation that is either taking place, or is being contemplated. In this respect, I note that my comments echo what I had stated above in respect to the meaning of the phrase “engaged by or on behalf of a party to the litigation”.

The complainant argues that there are no grounds for questioning the independence and impartiality or the reliability of the doctor’s opinions, as they were made contemporaneously with events in the ordinary exercise of providing medical care for her patient and for no other purpose. As a result, the doctor’s report should be permitted to provide testimony about those opinions as a participant expert and without any formality such as an expert report.

[5] CIBC argues that the legal test for admissibility of expert evidence, where the purported expert’s objectivity is at issue is provided in *White Burgess Langille Inman v Abbott and Haliburton Co.*, *supra*, wherein the admissibility of an expert testimony depends on the consideration of the following factors:

- a) relevance;
- b) necessity;

- c) reliability, and
- d) absence of bias, including:
  - (i) impartiality, and
  - (ii) independence.

The questions of relevance and bias are important consideration in deciding whether Dr. Anderson's report should be accepted, whether she is qualified to give evidence as a participant expert or otherwise.

Dr. Anderson, in her testimony, stated that her report was not connected to CIBC's dismissal of the complainant.

In addition, I agree with the submission of CIBC that Dr. Anderson's advocacy for the complainant has prejudiced the matter at issue at this hearing and that the admission of her report would undermine the independence of the process.

[6] Having made the determination that Dr. Anderson's report is not admissible, I am prepared to accept the doctor's diagnosis that the complainant was under stress at the time that she wrote her report. I am prepared to give it the weight that it deserves.

[7] However, to emphasize, I am not prepared to accept Dr. Anderson's report as a participant expert or otherwise, for the purpose of demonstrating that CIBC was wrong in dismissing the complainant.

The issue of whether CIBC had just cause to dismiss the complainant is for this tribunal to determine after having considered all the evidence provided at this hearing.

#### COMPLAINANT'S DUTIES AS A TEAM LEADER

[8] The duties of a team leader were set out in my earlier decision on a preliminary matter dated November 20, 2018:

##### Job Overview

Team Leaders develop, coach, inspire and empower team members to provide customers with a superior sales and service experience. This also includes the ability to support employees in transferring the skills and knowledge they have and acquire in the classroom into success.

The Team Leader is directly accountable for conversion of contacts into new sales, service levels, performance targets and quality assurance standards for Telephone Banking's fast-paced environment.

Effective Team Leaders must demonstrate values that are oriented towards teamwork, building trust, reasonable thinking, inspirational leadership and encouragement of team members to take ownership.

##### Job Requirements

- Motivate and inspire excellent sales and customer service.

- Coach and mentor team members to develop skills required for their jobs and work with their team.

- Guide and motivate the team to meet challenging performance targets.
- Establish and sustain sales management ability; provide advice and coaching related to the sales model, creating positive memorable customer experiences and developing innovative solutions.
- Monitor sales and service activities to ensure adherence to CIBC's policies, practices and procedures.
- Analyze data (e.g. call activity, performance measures - Sales, productivity, quality) related to the team, team members and the Centre as a whole.
- Identify and remove obstacles in the way of optimal individual and team performance.-Network internally and externally to, enhance the process of continuous learning and identifying best practices.
- Conduct meetings and create an environment conducive to the exchange of information/ideas

#### Qualifications – External

#### What We're Looking For

- Successful candidates must exhibit CIBC's values of trust, team work, and accountability
- Must have superior verbal communication and interpersonal skills with a professional telephone manner
- 1-2 years of management experience preferably in a call centre or financial industry environment, would be an asset.
- Sales Management - Expert knowledge of sales management principles and processes and the ability to apply this knowledge to manage the sales activities of their team.
- Developed leadership - the ability to see the vision and translate it into action by inspiring other team members.
- People Development- the ability to coach team members empowering their day-to-day work lives and helping them thrive in continuous learning.
- Developed Facilitation Skills - the ability to lead a group to a desired outcome conduct technical training. Communication skills - excellent written, oral and presentation ability.
- Group dynamics - know the principles of effective group behaviours and ability to deal with diverse behaviours.

-Developed time and self-management skills.

[7] The main objective of the Team Leader's position is to ensure the members of the team of 12-15 financial services representatives (FSRs) meet pre-set targets for sales and service levels.

- a) Mr. Voltan testified that ultimately the team Lead is responsible for managing and supporting the FSRs in meeting various metrics and key performance indicators.
- b) Mr. Voltan also testified that the targets are set for Team Leads, and that the Team Leads would then set hourly, daily, or weekly goals for the FSRs in meeting those targets.

[8] The bulk of the Team Lead's work day is spent working on the floor directly with the Financial Services Representatives (FSRs) who work under them.

- a) Mr. Voltan testified that Team Leads spend the majority of their day coaching FSRs, through activities such as listening in on phone calls, at times walking around to address things in the moment, training FSRs on deficiencies in performance objectives, and training, either individually or in groups. Team Leads "make sure people are in the right frame of mind, culture, to succeed." Team Leads are not expected to handle incoming calls but do call clients back to resolve an issue-or to thank them for their business.
- b) Ms. Crawford agreed that the majority of her day was spent working directly with the members of her team and provided an example of coaching where she would work with an FSR to identify triggers and coach him or her to ask questions to start a conversation around a situation.

[9] The Team Lead is the first, or sometimes second, level of supervision over the FSR, an entry-level position.

### CIBC CODE OF CONDUCT

[9] CIBC's Code of Conduct was entered as an exhibit, as well as the complainant's employment agreements, which she signed on July 30, 2010, and at

times thereafter. CIBC refers to the most relevant provisions of these documents in its brief and are outlined as follows:

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

In accordance with the CIBC Code of Conduct, Team Leaders are held to even higher standards. As people managers, they are expected to lead by demonstrating exemplary behaviour:

Managers play an important role in helping to ensure that the principles and standards of the Code are respected. They are role models for employees and contingent workers regarding acceptable standards of behaviour and are the first point of contact for employees and contingent workers who have questions about the Code. They must also support and protect any employees or contingent workers who, in good faith, report a potential violation of the Code.

The Employment Agreement also stresses the importance of maintaining confidentiality, which is accentuated by the relationships that CIBC has with its customers:

While employed at CIBC, you will have access or be privy to certain confidential information and documentation regarding the past, present or future affairs of CIBC, its customers, its suppliers and its employees, ... The disclosure or use of this information other than as required in the normal course of your employment would be highly detrimental to the interests of CIBC. Accordingly, you cannot disclose or use any confidential information unless properly authorized to do so.

The Employment Agreement incorporates the CIBC Code of Conduct, both in general and specifically in the clause providing for termination for just cause:

Cause includes, but is not limited to, dishonesty, failure to perform your duties in a satisfactory manner or a material breach of the terms

and conditions of your employment, including any applicable Code(s) of Conduct.

The Code of Conduct further highlights the protection of the privacy of CIBC's clients and employees including with the following sections:

6.1 Protecting Confidentiality and Privacy

We will view, use, or disclose client, employee or contingent worker information only when we have a business purpose for doing so and in compliance with applicable law[sic]. We understand that CIBC may monitor account inquiries for the purpose of detecting unauthorized use, sharing or access.

...

7.0 Cooperating with Investigations

We will cooperate unconditionally with any CIBC department that audits, tests or investigates issues within CIBC, and be truthful regarding all information about which we have knowledge.

A CIBC employee who breaches the Code of Conduct is subject to discipline, up to and including termination:

8. Contravention of the Code

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



SUMMARY OF EVENTS REGARDING LEAVE OF ABSENCE AND  
RETURN TO WORK

[10] The complainant had been in a relationship which eventually ended with Mr. Dashti physically assaulting the complainant. CIBC had no knowledge of this situation until January 4, 2016 when the complainant advised Mr. Voltan, her Senior Manager at the time, that her relationship with Mr. Dashti, her ex-spouse and co-worker in the Contact Centre, had ended. She further advised that during the relationship Mr. Dashti had been physically abusive and alleged that Mr. Dashti was harassing her in the workplace.

[11] As a result of the allegations of workplace harassment CIBC immediately began an investigation into the matter. At that time the complainant was advised that in accordance with the CIBC Code of Conduct she was to refrain from speaking to any witnesses that were to be interviewed as a result of the complaint. It was determined during the investigation that the complainant breached the confidentiality by talking to other witnesses that were to be interviewed.

[12] On January 21, 2016 the complainant went to the police and Mr. Dashti was charged with assault, among other charges. He was released and returned to work.

[13] On January 24, 2016 the complainant went off work on short-term disability until May 2016, with a full return in June 2016.

[14] When the complainant returned to the workplace her Senior Managers, Mr. Ramia and Mr. Voltan, accommodated the complainant's scheduling requests with respect to Mr. Dashti. First, she requested to work an offset schedule from Mr. Dashti. Later, she requested to work the same schedule as him. In both cases the requests were accommodated. In the hearing, the complainant admitted to making these requests.

Also, on July 16, the complainant requested a transfer to another call centre. This request was denied because the complainant was already under discipline.

Because the complainant had been off work it was not until July 26, 2016 that she was handed a formal disciplinary letter regarding the investigation that took place in January.

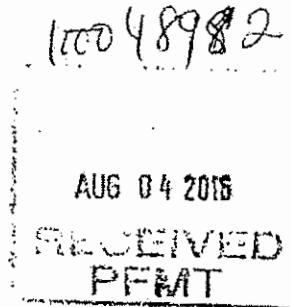


July 26<sup>th</sup> 2016

**PERSONAL AND CONFIDENTIAL**

Delivered in person

Kelsey Crawford  
Team Leader  
Telephone Banking, Inbound  
Halifax, Nova Scotia



Dear Kelsey:

Further to our ongoing discussions in January and June, 2016 we have significant concerns with your workplace behaviour. This letter constitutes a formal disciplinary warning.

As discussed previously, we learned of multiple breaches of confidentiality during an investigation during the period of January 2016. However, you were away from the office on short-term disability from January 24, 2016 until June 20, 2016 and we did not discuss these specific concerns with you as we wanted to give you time to complete your full transition back to work.

Our concerns are first with your behaviour in maintaining confidentiality during the course of a workplace investigation and secondly as a people manager in possession of confidential employee information.

The first violation of CIBC policy was in relation to a workplace investigation. In January 2016 CIBC was in process of investigating an allegation brought forward by you. We met with you on January 7, 2016 to formally hear about your complaint. At that time, you were advised that in accordance with CIBC's Code of Conduct, we would investigate the matter thoroughly and swiftly. You were also advised, according with CIBC's Code of Conduct, to maintain confidentiality about the complaint and to refrain from speaking to any witnesses that were part of the complaint.

However, we learned that on January 10, 2016 you met with one of the witnesses and told him specific details of the complaint even though you had been explicitly asked not to do on January 7<sup>th</sup>. Your actions interfered with the investigation and were a breach of CIBC Code of Conduct.

Additionally, in the course of the same investigation we learned that you breached CIBC policy by sharing private detailed disciplinary information about another employee. As a people leader, you are provided with a high level of trust by CIBC. It is expected that you will maintain the strictest of confidentiality related to your team members' disciplinary matters and performance results.

When we met in January 2016 to discuss your breaches, you acknowledged in a conversation with Debbie Grant and Heidi Lusby that you had shared confidential work related information with your former boyfriend and stated that "yes, I'm sure that during our relationship that I probably told him things about employees that I shouldn't have". Further in January when we asked you about interfering with a CIBC investigation by speaking with a witness you were not able to provide a reasonable explanation for your actions. When we spoke with you again about interfering in the investigation in June you initially denied this happening, but then admitted that you had spoken with this witness.

Kelsey, your lack of judgment and breaches of confidentiality are unacceptable and cannot happen again. It is our expectation that you will demonstrate CIBC's values of trust, teamwork, and accountability in all of your actions. Further it is expected that as a people manager you will maintain employee information in strict confidence and uphold CIBC's policies and Code of Conduct.

CIBC takes the issue of the privacy of our clients and employees very seriously. Your actions have breached CIBC's Code of Conduct sections:

6.1 Protecting Confidentiality and Privacy

- "We will view, use or disclose client, employee or contingent worker information only when we have a business purpose for doing so and in compliance with applicable law. We understand that CIBC may monitor account inquiries for the purpose of detecting unauthorized use, sharing or access."

7.0 Cooperating with Investigations

- "We will cooperate unconditionally with any CIBC department that audits, tests or investigates issues within CIBC, and be truthful regarding all information about which we have knowledge."

And your employment agreement which states:

- "Adherence to CIBC's Policies and Procedures; "You will be required to become familiar with and abide by all CIBC's by-laws, rules, regulations, procedures and policies and in particular those that apply to your day to day job duties, including the terms of this agreement and CIBC's Code[s] of Conduct which are incorporated into your employment contract by this reference."

This letter is a formal warning to you that if you engage in similar behaviours or breach of CIBC's Code of Conduct further disciplinary action will be taken up to and including termination without notice, or payment in lieu of notice.

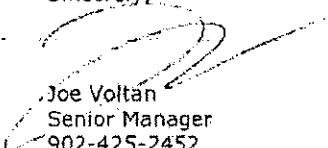
Given the seriousness, this breach will impact your Performance Management & Measurement (PMM) and Annual Incentive Plan (AIP) as appropriate.

If you need personal advice, the Employee Assistance Program support line is a confidential, professional assistance program for employees and their dependents. You may call 1-800-387-4765, TTY 1-877-338-0275.


A copy of this letter will be placed in your employee personnel file.

Please do not hesitate to contact me if you have any questions or require clarification.

Sincerely,

  
Joe Voltan  
Senior Manager  
902-425-2452

|                |       |       |       |           |       |
|----------------|-------|-------|-------|-----------|-------|
| Received<br>on | _____ | _____ | _____ | Signature | _____ |
|                | day   | month | year  |           |       |

Witness Joe RAMIA  


Refused to sign July 27<sup>th</sup> 2016

[15] Mr. Ramia's testimony and written notes indicate that after the requested shift changes he had a conversation with the complainant wherein she told him there was no longer any bullying from Mr. Dashti, that "I have to move on" and as long as he does not bother me at work it will be fine". This statement seems to support the comments made by the complainant in her year-end assessment report dated September 30, 2016, wherein she stated the following:

This has been a very challenging year for me. I have overcome many obstacles and am looking forward to finishing this year strong and focusing on the future and developing as a leader. Currently my biggest challenge is time management,

most recently I have taken the time management course and each day I make a list and prioritize my day. By managing my time and prioritizing better it will help me so that I don't get overwhelmed or miss any important deadlines, this will also improve my perception that I am continuously working hard to improve. I genuinely care about each employee on my team and am proud of where my current team is with their results. When I initially took over the team we were in the 60's for approved revenue on the 5 report, for September and October we have finished over 100% and though it took a few months and a lot of hard work it's nice to see the hard work reflecting in our results and we were top for October and September in our line of business as well. My teams NPS results have also been consistently above target! I have been in this role for a few years now and am looking forward to fiscal 2017 so I can focus on my own development get back involved with the committees as I did for numerous years. I recently joined the TL esat committee am excited to take on more as well. Thanks to Joe Voltan and Joe Ramia for their ongoing leadership and support, they are truly leaders I want to emulate. 2017 will be the year of Kelsey. I am working towards my goal of becoming a team leader in the targeted queue as I think my energetic outgoing personality and work ethic would be a great fit for the fast paced environment.

[16] In her testimony the complainant stated that the positive statements she made were all lies and that she told repeated them in order to keep her job.

[17] The complainant, in her submissions, states that the investigation of harassment was far from fulsome and failed to take into account the complexity involved with domestic abuse.

[18] The complainant argues that CIBC did not sufficiently accommodate her in the workplace and should have done more. For example, notwithstanding the complainant was under discipline, there could have been a more thorough consideration of her request to move to another call centre location.

WORKPLACE HARASSMENT AND INVESTIGATION

[19] During the several days of testimony given by Deborah Grant, Director, Joseph Voltan, Senior Manager, and Youssef Ramia, Senior Manager, extensive notes of the investigation were introduced and supported by the testimony of the relevant days when the investigation was conducted. Their testimony, along with the tabs of exhibits, was largely unchallenged.

[20] At the beginning of the investigation the complainant submitted the names of two fellow employees who would corroborate her claim of being harassed by Mr. Dashti in the workplace.

[21] Both of these employees were interviewed during the investigation and it was concluded that the complainant had talked to one of the employees the night before he was to be interviewed. The only information that employee had about any harassment was what the complainant had told him.

[22] The other witness also stated that he had not personally observed any harassment by Mr. Dashti and only knew about the harassment from what the complainant had told him.

[23] Before any of the witnesses were interviewed along with the complainant they were advised of the CIBC Code of Conduct, wherein they were to refrain from speaking to any witnesses that were to be interviewed.

[24] When Mr. Dashti was interviewed about the sexual harassment, as an aside he stated that the complainant had disclosed to him “all confidential things about coworkers”. As a result of further investigation CIBC discovered that the information that Mr. Dashti was giving to them he could not have known about unless the complainant told him.

When confronted with this information the complainant initially denied having shared any of that information with Mr. Dashti. Finally, when confronted with the details she admitted, “I’m sure I said things that I shouldn’t have, - likely said too much”.

[25] During the interview of harassment Mr. Dashti mentioned that the complainant was using and had possession of drugs in the workplace. At this stage CIBC had no option but to investigate the matter. The complainant was asked about this and vehemently denied any involvement with drugs in the workplace. At this point I can understand that the complainant was upset that Mr. Dashti was making these unfounded allegations. One can understand her frustration on this point, however it is clear that CIBC was not accusing the complainant about the



use of drugs but was merely following up on information that was provided to them by Mr. Dashti.

[26] Further, during the investigation, the complainant was accused by fellow employees of having worked as a “stripper” while she was on sick leave. Once again CIBC was obligated to investigate this complaint. The complaint from her fellow employees turned out to be false. As a result these employees were disciplined for their false accusations. Once again the complainant was upset, and had every reason to be, however it is clear that CIBC was not accusing the complainant but they had to investigate the matter.

[27] The complainant further argues that CIBC had an obligation to investigate her allegation of spousal abuse that was committed in her personal life and away from the workplace. The evidence was clear that senior managers, when first advised of the allegation, encouraged her to report the matter to the police. There was also evidence from the managers that they encouraged her, on more than one occasion, to report the matter and follow through.

[28] Having had the matter reported to the police it was assumed that they would carry through the investigation. In my view, with the police investigation underway, it would be improper for CIBC to conduct its own investigation and was right in leaving the matter to the police.

ACCOMMODATION

[29] In addition to the complainant's request for accommodation as outlined in paragraph 15 here, these shift changes were made so as to minimize any contact with Mr. Dashti.

Also at this time the managers changed the work locations so as to minimize contact between the complainant and Mr. Dashti in the workplace.

[30] Notwithstanding the accommodations made for the complainant, it is alleged that CIBC could have done more in allowing her to transfer to another location in another call centre. At the time the complainant was under discipline and management decided that a transfer at that time was not advisable.

[31] From the un-contradicted evidence of the two senior managers and based on the extensive documentation presented at this hearing, I have to conclude that CIBC did everything reasonable to accommodate the complainant, with the exception of her request for transfer to another location.

[32] After accommodation had been made Mr. Ramia testified and his notes verified, that he had a conversation with the complainant. He related that the complainant told him that there was no longer any bullying by Mr. Dashti and she

told him that “I have to move on and as long as he does not bother me at work I will be fine”.

[33] Then, on September 30 the complainant wrote a year-end report wherein she made complimentary remarks about her two senior managers. She was applauding them for their ongoing leadership and support. The full content of the report is reproduced in para. 15 herein.

[34] After the accommodations were put in place there was no evidence before me that the complainant had any other complaints about harassment. Also, nothing was reported after that date except for the glowing letter in September.

[35] Then, on November 15, the telephone call that gave rise to the dismissal occurred.

#### THE TELEPHONE CALL

[36] On November 7, 2016 the complainant received a call from a FSR telling her that a client was looking for assistance regarding a refund and had asked to speak to a supervisor.

The complainant took the call from the client, who was asking for a refund of charges applied to an account which he says was as a result of him being “in and

out” of a mental institution during the past year. The client felt that CIBC’s refusal to reimburse the charges was preying on his mental illness.

The complainant told him that CIBC was not willing “to credit him” and telling him “we all have our issues – I have my struggles too. We credit you 279 and I don’t want to discuss mental illness anymore”.

The call lasted a period of 21 minutes. The complete transcript of the call was reproduced at this hearing. At times throughout the call the client was put on hold. CIBC refers to some of the comments that they find most serious:

1. “I am not giving him a frickin’ dime”,
2. In reference to client’s call, “That’s stupid”,
3. I just think some people feel entitled. ... I don’t even think he’s mentally ill”,
4. “Do you got another one of them chips? Jesus that was good. I mean Geez Louise. I’m going to get myself in shit, I think.”
5. Nobody gives me money when I’m broke. ... this guy better get off my phone”.

Finally, the complainant ended the call by calling the client “fucking idiot”.

[37] The audible comments were overheard by the complainant's colleagues, including subordinates. As a result the telephone call was reported to management by both FSRs and her fellow Team Leaders.

[38] Following the call the complainant approached another team leader who was within earshot and asked whether he was going to "tell on her". The complainant immediately left work following the call and called in sick the next day.

[39] When questioned about the call the complainant said she could have handled the call better and that she made comments that she shouldn't have and that were disrespectful and inappropriate, and agreed it was a very serious incident.

#### MITIGATION

[40] There was sufficient evidence to satisfy me that the complainant was in an abusive relationship in her personal life. This resulted in the complainant suffering from stress.

[41] In the submissions, counsel for the complainant argues that:

Although there is no concrete evidence that any one of the personal stressors Ms. Crawford was under had a causal connection to her behaviour in the telephone call of November 6, it is submitted that the sheer combination of them enables a reasonable inference of such a connection to be made. In the alternative, the personal stressors are a factor indicating there was not just cause for dismissal.

[42] The complainant further submits that CIBC's conduct in this situation is a contextual factor to consider, wherein there was a corporate failure with respect to the investigation of harassment in the workplace and the failure to accommodate the complainant.

[43] With respect to these arguments I have come to the conclusion that, from the facts set out herein, that CIBC took all reasonable steps to accommodate the complainant in her return to work. Indeed, it took the complainant's suggestions concerning her wishes for accommodation.

[44] With respect to the harassment investigation, contrary to what was argued by the complainant, I am satisfied that the investigation was fulsome.

[45] In addition, the complainant, by her emails, cards and other communications to Joe Voltan and Joe Ramia indicated how much she appreciated their support. These assertions were confirmed in her self-evaluation report dated September 2016.

[46] It is noted that Dr. Anderson confirmed that there was no connection between the complainant's medical condition to her conduct on the telephone call in November.

[47] I have considered the complainant's personal stress in her life that she had to deal with, together with the circumstances that arose around her return to work. Having analysed all of that I cannot make a reasonable connection so as to mitigate the complainant's behaviour on the telephone call.

### JUST CAUSE

[48] Turning now to the consideration of whether the complainant's dismissal was for just cause pursuant to s. 242(3) of the *Canada Labour Code*, which reads as follows:

#### Decision of the Board

(3) Subject to subsection (3.1), the Board, after a complaint has been referred to it, shall

(a) consider whether the dismissal of the person who made the complaint was unjust and render a decision thereon; and

(b) send a copy of the decision with the reasons therefor to each party to the complaint and to the Minister.

[49] The approach to be taken in assessing the existence of just cause is set out in the Supreme Court of Canada *McKinley v BC Tel*, 2001 SCC 38, wherein Justice Iacobucci, writing for the court, stated the following at para. 29:

29           When examining whether an employee's misconduct – including dishonest misconduct – justifies his or her dismissal, courts have often considered the context of the alleged insubordination. Within this analysis, a finding of misconduct does not, by itself, give rise to just cause. Rather, the question to be addressed is whether, in the circumstances, the behaviour was such that the employment relationship could no longer viably subsist.

[50] The issues to be analysed in dismissal for just cause are outlined in the often-quoted case British Columbia Labour Relations Board *Wm. Scott & Co. Ltd. and Canadian Food & Allied Workers Union, Local P-162*, [1977] 1 Can. L.R.B.R. 1 (B.C.L.R.B.), 1976 CarswellBC 518, [1976] 2 W.L.A.C. 585, [1976], wherein Arbitrator Wheeler characterized the issues in a termination as follows:

- (i) How serious is the immediate offence of the employee which precipitated the discharge (for example, the contrast between theft and absenteeism)?
- (ii) Was the employee's conduct premeditated, or repetitive; or instead, was it a momentary and emotional aberration, perhaps provoked by someone else (for example, in a fight between two employees)?
- (iii) Does the employee have a record of long service with the employer in which he proved an able worker and enjoyed a relatively free disciplinary history?
- (iv) Has the employer attempted earlier and more moderate forms of corrective discipline of this employee which did not prove successful in solving the problem (for example, of persistent lateness or absenteeism)?
- (v) Is the discharge of this individual employee in accord with the consistent policies of the employer or does it appear to single out this person for arbitrary and harsh treatment (an issue which seems to arise particularly in cases of discipline for wildcat strikes)?

[51] Turning now to consideration of each of the above questions:

**(i) How serious is the immediate offence of the employee which precipitated the discharge?**

The complainant's handling of the telephone call involved a serious breach of the Code of Conduct. The testimony disclosed that a member of the Management Team, after listening to the call, stated it was one of the worst calls



they had ever heard in their years at the centre. The serious result of the call was that the complainant harmed her credibility in instructing and assessing the work performance of the FSRs in handling customer inquiries. This was one of the core functions of a team leader.

I am also cognizant of the fact that the complainant, at this hearing and after questioning, did acknowledge that it was a bad call. However, the complainant is of the opinion that the call did not warrant dismissal.

**(ii) Was the employee's conduct premeditated, or repetitive; or instead, was it a momentary and emotional aberration, perhaps provoked by someone else?**

Considering that the call lasted 21 minutes it cannot be seriously considered a momentary lapse. In addition, the banter carried on with the FSRs, when the client was on hold, demonstrated that the conversation with the client was intended.

I am satisfied that the complainant failed to present any evidence to show any connection between her stress and her behaviour on the call.

**(iii) Does the employee have a record of long service with the employer in which he proved an able worker and enjoyed a relatively free disciplinary history?**

The complainant was a six year employee. During the term of her employment the complainant had received the following discipline for breaches of customer services:

- September 22, 2010 she received a warning letter for disconnecting and not answering a call on September 16, 2010. The complainant met with the team leader and received the letter on the same date.
- March 31, 2011 she received another warning letter for a privacy/security breach (giving a client the RRSP account number of another client without confirming the caller's identity. This event occurred on February 22, 2011.
- August 2, 2011 the complainant received a letter advising her of standards-code of conduct where she used inappropriate language in the workplace (while client on hold waiting to be transferred). This occurred on July 7, 2011.
- January 4 – 14, 2016 CIBC carried out the workplace harassment policy as described herein and during that investigation it was discovered that the

complainant committed two breaches of privacy and breached the Code of Conduct. As it turned out the complainant discussed the details of her relationship with Mr. Dashi with Mr. Turong prior to his interview, despite explicit instructions not to do so.

Also, the complainant admitted that she shared confidential work-related information with Mr. Dashi. She did testify at this hearing that she probably told him things about employees that she shouldn't have. On July 26, 2016 the complainant received a disciplinary warning letter for breaching confidentiality, in violation of direct employer instructions and the CIBC Code of Conduct. The letter warned that any further breaches of the Code of Conduct would result in termination:

This letter is a formal warning to you that if you engage in similar behaviours or breach of CIBC's Code of Conduct further disciplinary action will be taken up to and including termination without notice, or payment in lieu of notice.

**(iv) Has the employer attempted earlier and more moderate forms of corrective discipline of this employee which did not prove successful in solving the problem?**

The disciplinary record of the complainant speaks for itself. The complainant was duly warned that any further breaches of the Code of Conduct would result in termination.

**(v) Is the discharge of this individual employee in accord with the consistent policies of the employer or does it appear to single out this person for arbitrary and harsh treatment?**

There was no evidence at this hearing to show that the complainant had been singled out unfairly.

#### LEGAL AUTHORITIES

[52] The parties have relied on a large volume of cases that support each position. The cases cited by CIBC are as follows: *Ivanore v Canadian Imperial Bank of Commerce*, [1983] C.L.A.D. No. 68, (Can. Arb.); *Jansen v Pacific Central Carriers Ltd.*, [2009] C.L.A.D. No. 49 (Can. Adj.); *LeBlanc and Purolator Inc., Re*, 2015 CarswellNat 5 (Can. Adj.); *McKinley v BC Tel*, 2001 SCC 38; *Nickerson v Bank of Nova Scotia*, [2007] C.L.A.D. No. 322 (Can. Adj.); *Payne v Bank of Montreal*, 2012 CarswellNat 1035 (F.C.); *Sail'uz First Nation v Sparvier*, 2010 CarswellNat 1014 (Can. Arb. Bd.); *Shaw Cablesystems Ltd and Zabowski (Re)*, 2004 CarswellNat 7882 (Can. Adj.); *Shopping Channel and Agyekum (Re)*, 2000 CarswellNat 6983 (Can. Adj.); *Timmins and Paul's Hauling Ltd. (Re)*, 2000 CarswellNat 6933 (Can. Adj.); *Westerhof v Gee Estate*, 2015 ONCA 206; *Wilson v Atomic Energy of Canada Ltd.*, 2016 SCC 29.

[53] The cases cited by the complainant are: *Bank of Nova Scotia v Randhawa*, 2018 FC 487; *Canada Safeway Ltd. v UFCW, Local 401*, 2008 CarswellAlta 712; Canada; *Canada Safeway Ltd. and UFCS, Local 832 (Kubera)*, 2006 CarswellMan 914 (Man. Arb.); *Doro v Canada Revenue Agency*, 2019 FPSLRB 6 (PSLRB); *H.S.A.S. v Regina Qu'Appelle Health Region*, 2009 CarswellSask 716 (Sask. Arb.); *I.M.P. Group Ltd., Re.*, 2018 CarswellNat 7104; *Kaul v The Queen*, 2017 TCC 55; *M.A.B. v L.A.B.*, 2013 NSSC 89; *McKinley v BC Tel*, 2001 SCC 38; *Payne v Bank of Montreal*, 2013 FCA 33; *Purolator Courier Ltd and TC, Local 938 (Glazier), Re.*, 2013 CarswellOnt 14215 (Ont. Arb.); *Roher v Canada*, 2019 FCA 313; *Saskatchewan v Racette*, 2020 SKCA 2; *Thomas and Taiko Trucking, Inc. Re.*, 2019 CarswellNat 5874 (Can. Adj.); *U.N.A., Local 33 v Capital Health (Royal Alexandra Hospital)*, 2008 CarswellAlta 2236 (Alta. Arb.); *Van de Skype v Saskatchewan Government Insurance*, 2020 SKCA 18; *Weed and Royal Bank of Canada, Re.*, 2017 CarswellNat 343 (Can. Adj.); *Westerhof v Gee Estate*, 2015 ONCA 206.

[54] The cases cited mainly involve the banking industry, the service industry and the unionized workforce.

[55] The bank authorities cited involve positions of trust that are considered most important in that sector. A position of trust is most important in the local branches

of the bank, which breaches of trust often involve theft or fraud. This, of course, is not the case with the complainant. However, trust is also very important in the call centre, as evidenced by the Code of Conduct and the individual contract of employment.

[56] In unionized workforces, the Collective Agreement governs, and not individual contracts of employment, as with the bank.

[57] In the call centre it is clear that trust is considered an important factor. This is set out clearly in the individual employee's employment contract and again emphasized in the CIBC Code of Conduct.

[58] The complainant's employment contract dated July 30, 2010 and signed by the complainant, sets out how important CIBC considers the code of conduct and the consequences of any breach.

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

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

Confidentiality – while employed by CIBC, you will have access or be privy to certain confidential information and documentation regarding the past, present or future affairs of CIBC, its customers, its suppliers and its employees. This information and documentation is the sole property of CIBC, both during the term of your employment and thereafter. The disclosure of use of this information other than as required in the normal course of your employment would be highly detrimental to the interests of CIBC. Accordingly, you cannot disclose or use any confidential information unless properly authorized to do so.

Termination of Employment –

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

By signing below, you are acknowledging that you have read and understood the contents of this Employment Agreement. In addition, you have had the opportunity to obtain independent legal advice, and having had this opportunity, your signature confirms that you accept and agree to the terms of this Agreement, and agree that all of the terms are reasonable.

## DECISION

[59] I have found that CIBC acted properly at all relevant times and was not a mitigating factor in the complainant's dismissal.

[60] I then considered the issues to be determined as outlined in Wm. Scott, *supra*. Having done that I have come to the conclusion that CIBC had just cause to dismiss the complainant under the meaning of ss. 244(1) and 242(3) of the *Code*.

As a result of the above findings the complainant's request for financial compensation is dismissed.

[61] I wish to add that I found the complainant to be sincere in her belief that she was treated unfairly by CIBC. However, the evidence has convinced me otherwise.

Now that the complainant has moved on with her life, free of the terrible stress she had in her personal life, I am confident that she has the ability to do well in any position she chooses.

DATED this 23rd day of November, 2020.



J.A. MacLellan, Adjudicator