CITATION: Ghazvini et al v. Canadian Imperial Bank Of Commerce, 2025 ONSC 5218
COURT FILE NO.: CV-22-00690999-0000
DATE: 20250925

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
Ghazvini et al	)	*Marc Kitay*, *Aaron Zaltzman* for the Plaintiff/Applicant
Plaintiff/Applicant	)	
	)	
– and –	)	
	)	
Canadian Imperial Bank Of Commerce	)	*Edward J. O'Dwye*r, *Kelly Brennan* for the Defendant/Respondent
	)	
Defendant/Respondent	)	
	)	
	)	
	)	
	)	**HEARD:** May 15, 16 and 20, 2025

REASONS FOR JUDGEMENT

MERRITT J.

OVERVIEW

[1] The Plaintiffs were employed at the Canadian Imperial Bank of Commerce ("CIBC") as Mobile Investment Consultants. Their employment was terminated without cause and they sued for wrongful dismissal.

[2] The parties agree that the *Canada Labour Code* R.S.C., 1985, c. L-2 ("*CLC*") applies to the Plaintiffs' employment relationship with CIBC. The parties agree that the Plaintiffs' employment was terminated because of a broader restructuring, not for just cause and was not unfair or unjust. The parties agree that CIBC paid the Plaintiffs their minimum entitlements under the *CLC*. The parties also agree that if the termination provision in the Plaintiffs' employment contracts is unenforceable, the Plaintiffs are entitled to damages in lieu of reasonable notice of the termination of their employment under the common law.

[3] The Plaintiffs submit that the termination provision violates the minimum standards under the *CLC* and fails to rebut the presumption that they are entitled to reasonable notice of the termination of their employment under the common law. The Plaintiffs say that both the "For Cause Provision" and the "Without Cause Provision" are problematic. The Without Cause

Provision provides for termination "at any time" which the Plaintiffs say violates the *CLC* because there are circumstances in which CIBC cannot terminate employment.

[4] The Plaintiffs submit that the For Cause Provision also violates the *CLC*. The For Cause Provision contains a list of reasons that amount to "Cause". The Plaintiffs submit that the reasons listed may or may not amount to just cause in law, depending on the particular surrounding circumstances; therefore, the For Cause Provision may provide for termination for things that are not, in fact, cause under the *CLC*. This result, the Plaintiffs submit, is sufficient for this court to find that the For Cause Provision violates the *CLC*.

[5] The Plaintiffs say that the Saving Provision does not salvage the defects in the termination provision. Courts reject these saving provisions because they disincentivize employers to draft employment agreements which comply with the applicable legislation.

[6] CIBC submits that the Termination Provision complies with the *CLC*, is enforceable, and rebuts the common law presumption of reasonable notice. Therefore, the Plaintiffs are not entitled to any damages.

[7] CIBC submits that the court previously adjudicated the validity of the Termination Provision and I am bound by the decision in *Horwitz v. Canadian Imperial Bank of Commerce*, 2019 ONSC 7583. In *Horwitz*, a judge of the Divisional Court upheld a decision of the Small Claims Court where the court considered the very same termination provision and found it to be unambiguous and enforceable.

[8] The Plaintiff submits that *Horwitz* is not binding authority because the law has shifted significantly since 2018 and, in particular, the Court of Appeal changed the law in *Waksdale v. Swegon North America Inc.*, 2020 ONCA 391, 446 D.L.R. (4th) 725, such that there are new arguments available today and *Horwitz* no longer fits with the current law.

ISSUES

[9] There are potentially 5 issues:

1) Does the Termination Provision violate the *CLC*?

2) Does the saving provision save the Termination Provision?

3) What is reasonable notice in this case?

4) What are the Plaintiffs' damages for pay in lieu of notice?

5) Did either Plaintiff fail to mitigate their damages by not pursuing other job opportunities?

DECISION

[10] For the reasons that follow, I find that the termination provision is unenforceable and does not rebut the common law presumption of entitlement to reasonable notice.

[11] Mr. Ghazvini is entitled to seven months' notice of termination and Ms. Rose is entitled to 12 months' notice of termination.

[12] The Plaintiffs' damages include compensation for the 2022 annual bonus and the salary, commission and benefits they would have earned during the notice period, less any notice or pay in lieu of notice already provided by CIBC.

AGREED FACTS

[13] The parties filed an Agreed Statement of Facts:

1) Mr. Ghazvini commenced employment with CIBC on February 20, 2017. Prior to joining CIBC, he worked for TD Bank for 2.5 years, and before that he worked at Home Depot in a non-banking/financial services role. Mr. Ghazvini has a bachelor's degree in information technology.

2) Ms. Rose commenced employment with CIBC on March 28, 2016. Prior to joining CIBC, she worked at Primerica Financial Services for 15 years, and before that she worked as a housewife. Ms. Rose's education is limited to a high school diploma.

3) The Defendant, Canadian Imperial Bank of Commerce, is a chartered bank of Canada which carries on business in the banking and financial services industry. CIBC provides a full range of financial products and services.

4) Both Mr. Ghazvini and Ms. Rose were employed as Level 7 Mobile Investment Consultants ("MICs") until they were provided notice on September 12, 2022, that their employment would end effective October 7, 2022, due to a restructuring. CIBC terminated both Plaintiffs' employment without cause.

5) At the time the Plaintiffs were provided notice their employment was ending, on a without cause basis, Mr. Ghazvini was 38 years old and Ms. Rose was 54 years old.

6) As MICs, Mr. Ghazvini and Ms. Rose were responsible for advising clients through purpose driven conversations to help them achieve their long-term ambitions. The role was a sales-based role.

7) Neither Mr. Ghazvini nor Ms. Rose managed any direct reports.

Terms of Employment

8) Prior to commencing their employment with CIBC, both Mr. Ghazvini and Ms. Rose executed employment agreements which contained the following termination provision:

   Termination of Employment

   By CIBC for Cause – CIBC may terminate your employment at any time without advance notice, or pay in lieu of notice, for Cause. Cause includes, but is not limited to, dishonesty,

fraud, breach of trust, failure to perform your duties in a satisfactory manner, a breach of the Code, failure to obtain or maintain any required TLAs, failure to complete the pre-employment screening process to the satisfaction of CIBC, providing false, misleading or inaccurate information during the hiring process, a breach of any other term or condition of your employment, and any act or omission recognized as Cause under applicable law. If your employment is terminated for Cause, you will have no entitlement to any notice of termination, payment in lieu of notice of termination, severance or any other damages whatsoever (the "For Cause Provision").

By CIBC without Cause – CIBC may terminate your employment at any time without Cause. If your employment is terminated without Cause, you will receive two weeks' notice or pay in lieu of such notice, or a combination thereof, for each completed year of service, provided that you sign a full and final release in a form satisfactory to CIBC (the "Release"). The total period of notice or pay in lieu of notice, or combination thereof, shall be no less than three weeks and no more than eighteen months. Pay in lieu of notice may be provided in a lump sum, or by way of periodic payments and may be subject to mitigation, at the discretion of CIBC, in accordance with applicable laws.

If you do not sign the Release or if your employment is terminated within three months following the start of your employment, you will only receive your minimum entitlements pursuant to applicable employment standards legislation, and will not be entitled to any additional notice of termination, pay in lieu of such notice, or severance pay (the "Without Cause Provision").

Compliance with Legislation – CIBC will comply with all requirements of applicable employment standards legislation. If any of the above Termination of Employment provisions do not conform to the notice and severance requirements of applicable employment standards legislation, the statutory minimums shall apply and be considered reasonable notice and severance (the "Saving Provision" and, in its entirety, the "Termination Provision").

Compensation and Benefits

9) At the time their employment ended, both Mr. Ghazvini and Ms. Rose received an annual base salary of $50,000 (gross).

10) Both Mr. Ghazvini and Ms. Rose were also eligible to earn Variable Incentive (i.e. commissions) and Annual Bonuses, subject to the terms and conditions of the CIBC Mobile Investment Consultant (in Quebec: Mobile Investment Specialist), Variable Compensation Plan ("MIC Plan"), the Restricted Share Awards Plan, and executed Grant Agreements, as applicable.

11) Both Plaintiffs have received all granted Restricted Share Awards ("RSAs"). There are no RSAs that remain unvested.

12) Both Mr. Ghazvini and Ms. Rose were eligible to participate in CIBC's group benefits and defined benefit pension plans, subject to the terms and conditions of the benefits plans.

Subjective Performance Assessment

13) Mr. Ghazvini and Ms. Rose each received subjective performance reviews following the close of each fiscal year.

14) CIBC rated Mr. Ghazvini's performance during the three fiscal years preceding his dismissal as follows:

    (a) 2019: Achieved Some Goals

    (b) 2020: Achieved Some Goals

    (c) 2021: Exceeded Goals

15) CIBC rated Ms. Rose's performance during the three fiscal years preceding her dismissal as follows:

    (a) 2019: Achieved All or Most Goals

    (b) 2020: Exceeded Goals

    (c) 2021: Exceeded Goals

16) During the 2022 fiscal year, CIBC awarded Ms. Rose a Purpose Award 1000.

CIBC's Supports for the Plaintiffs

17) In addition to four weeks working notice, Mr. Ghazvini was provided $3,028.57 (gross) in full satisfaction of his entitlements under the Canada Labour Code.

18) Likewise, in addition to the four weeks working notice, Ms. Rose was provided $4,457.14 (gross) in full satisfaction of her entitlements under the Canada Labour Code.

19) Letters confirming employment were available upon request. Neither Mr. Ghazvini nor Ms. Rose requested a letter confirming employment.

20) Both Plaintiffs failed to secure new employment within the notice periods sought in the claim, and did not secure any replacement income during the notice periods sought in the claim.

[14] The case proceeded by way of a summary trial and the parties filed affidavits in lieu of evidence in chief. Both of the Plaintiffs, Mr. Kourosh Ghazvini ("Mr. Ghazvini") and Ms. Sandra Rose ("Ms. Rose") filed their own affidavits and were cross examined.

[15] CIBC filed the affidavits of Jacqueline Lorraine Briand ("Ms. Briand") and Darren Mooney ("Mr. Mooney") both of whom were cross examined. Ms. Briand is the Director, Human Resources, Commercial Banking & Business Banking for CIBC. Mr. Mooney is the Senior Director, Financial Planning and Advice Effectiveness, National Office Delivery and Operations, for CIBC.

ANALYSIS

ISSUE 1: Does the Termination Provision violate the *CLC*?

General Principals

[16] At common law, employees whose employment is indefinite in duration may be dismissed without cause if they are given reasonable notice of termination. The presumption that an employee is entitled to reasonable notice of termination may be rebutted if the employment contract clearly specifies some other period of notice: *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, at p. 998.

[17] A contract which rebuts the presumption of reasonable notice is only enforceable if it complies with the minimum statutory requirements such as those set out in the *Employment Standards Act*, 2000, S.O. 2000, c. 41 (the "*ESA*") or the *CLC* : *Wood v. Fred Deeley Imports Ltd.*, 2017 ONCA 158, 134 O.R. (3d) 481, at para. 16; *Egan v. Harbour Air Seaplanes LLP*, 2024 BCCA 222, 95 B.C.L.R. (6th) 28, at para. 24, leave to appeal to S.C.C. refused, 2025 CanLII 17299.

[18] The wording of the termination clause must be clear because employees should know from the beginning of their employment what their entitlements will be if their employment is terminated: *Machtinger*, at p. 998.

[19] Courts interpret employment contracts differently than other contracts because work is fundamentally important in a person's life. Work provides financial support and is an essential component of a person's identity, self-worth, and emotional well-being: *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 S.C.R. 313, at p. 368.

[20] Employees are at their most vulnerable and in need of protection when their employment is terminated: *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, at p. 704.

[21] In *Wood* at para. 28 the court set out a number of considerations relevant to the interpretation and enforceability of termination clauses:

- When employment agreements are made, usually employees have less bargaining power than employers. Employees rarely have enough information or leverage to bargain with employers on an equal footing.

- Many employees are likely unfamiliar with the employment standards in the *ESA* and the obligations the statute imposes on employers. These employees may not seek to challenge unlawful termination clauses.

- The *ESA* is remedial legislation, intended to protect the interests of employees. Courts should thus favour an interpretation of the *ESA* that 'encourages employers to comply with the minimum requirements of the Act' and 'extends its protections to as many employees as possible' over an interpretation that does not do so.

- Termination clauses should be interpreted in a way that encourages employers to draft agreements that comply with the *ESA*. If the only consequence employers suffer for drafting a termination clause that fails to comply with the *ESA* is an order that they comply, then they will have little or no incentive to draft a lawful termination clause at the beginning of the employment relationship.

- A termination clause will rebut the presumption of reasonable notice only if its wording is clear. Employees should know at the beginning of their employment what their entitlement will be at the end of their employment.

- Faced with a termination clause that could reasonably be interpreted in more than one way, courts should prefer the interpretation that gives the greater benefit to the employee. [Citations omitted.]

[22] These considerations apply equally to the statutory minimums under the *CLC*. Both the *ESA* and the *CLC* are remedial legislation: *Mayer v. J. Conrad Lavigne Ltd.*, (1979) 105 D.L.R. (3d) 734 (Ont. C.A.), at para. 14. Both are mandatory and minimum rights-conferring legislations designed to protect employees: *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 S.C.R. 770, at paras. 41-44. Both state that civil proceedings are unaffected by the individual termination sections of the statute, and thereby permit claims for common law reasonable notice: *Wilson* at para. 64. Both prohibit contracting out of the statutory minimum standards: *ESA,* s. 5(1) and *CLC,* s. 168(1).

[23] This court has applied the principles from *Wood* and *Machtinger* to a federally regulated employee and invalidated a termination clause for purporting to contract out of the *CLC*: *Sager v. TFI International Inc.,* 2020 ONSC 6608, 68 C.C.E.L. (4th) 133, at para. 20.

[24] In 2020, *Waksdale* changed the law. Previously an unenforceable "for cause" termination provision would not necessarily render the "without cause" provision unenforceable: *Khashaba v. Procom Consultants Group Ltd.*, 2018 ONSC 7617, 52 C.C.E.L. (4th) 89, at para. 70.

[25] In *Waksdale* the court held that an employment agreement must be interpreted as a whole and the correct approach is to consider whether the termination provisions as a whole violate the *ESA*. Termination provisions are unenforceable if they are, in whole or in part, illegal. It does not matter if the employer does not ultimately rely on the part of the provision which is illegal because the court determines enforceability at the time the contract is made: at paras. 10-11.

[26] The court in *Waksdale,* at para. 12, described the mischief associated with an illegal termination provision:

> …Where an employer does not rely on an illegal termination clause, it may nonetheless gain the benefit of the illegal clause. For example, an employee who is not familiar with their rights under the *ESA*, and who signs a contract that includes unenforceable termination for cause provisions, may incorrectly believe they must behave in accordance with these unenforceable provisions in order to avoid termination for cause. If an employee strives to comply with these overreaching provisions, then his or her employer may benefit from these illegal provisions even if the employee is eventually terminated without cause on terms otherwise compliant with the *ESA*.

Horwitz is not binding

[27] CIBC submits that I must find that the Termination Provision in this case is enforceable because I am bound by the finding in *Horwitz*. I do not agree that I am bound by *Horwitz* because the law has changed since *Horwitz* was decided and because I must decide issues that were not considered in *Horwitz.* These issues are the enforceability of the For Cause Provision and the implication of the phrase "at any time".

[28] In *Horwitz v. Canadian Imperial Bank of Commerce*, 2018 CanLII 151183 (ON SCSM) ("*Horwitz* ON SCSM"), the Small Claims Court deputy judge considered the enforceability of the very same Without Cause Provision. There, an employee sued CIBC for wrongful dismissal after two months of employment. The parties agreed that if Ms. Horwitz's employment was subject to a probationary period, CIBC fairly assessed Ms. Horwitz's suitability and CIBC was entitled to terminate her without notice.

[29] The deputy judge considered only the Without Cause Provision and specifically whether the reference to "no less than three weeks" notice in the second paragraph applied to probationary employees or whether the following words in the third paragraph applied:

> …if your employment is terminated within three months following the start of your employment, you will only receive your minimum entitlements pursuant to applicable employment standards legislation, and will not be entitled to any additional notice of termination, pay in lieu of such notice…

[30] The deputy judge found that the minimum entitlement of three weeks in the termination clause does not apply to employees terminated within the first three months: *Horwitz* ON SCSM, at para. 13. He said that the context of the sentence makes it clear that it only applies to employees terminated after three months because the next paragraph refers to employees terminated within three months: *Horwitz* ON SCSM, at para. 15. He concluded at para. 21:

> In my opinion, the wording of the termination clause is clear and unambiguous. It therefore ousts the common law presumption of reasonable notice. Accordingly,

> the clause and contract are enforceable. They limit Ms Horwitz's entitlements to the employment standards minimums.

[31] The deputy judge did not consider the For Cause Provision.

[32] On appeal, a single judge of the Divisional Court found no palpable and overriding error or extricable error of law. The judge also did not accept the argument that a broad "amendment clause" (i.e., saving provision) is necessarily void or, even if it is, voids the termination clause: *Horwitz* at para. 3. The parties provided no law for that proposition: *Horwitz,* at para 3.

[33] Stare decisis is not a straitjacket. Trial courts may revisit a decision where a new legal issue is raised or where there is a change in the legal framework such that the law materially advances: *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331, at paras. 44-46; *Duggan v. Durham Region Non-Profit Housing Corporation*, 2020 ONCA 788, 153 O.R. (3d) 465, at para. 63.

[34] The parties agree that in 2020, *Waksdale* changed the law; now, termination provisions are unenforceable if they are illegal in whole or in part. It does not matter if the employer does not rely on the part of the provision which is illegal because the court determines enforceability at the time the contract is made.

[35] In *Horwitz* neither the deputy judge nor the Divisional Court judge considered the enforceability of the For Cause Provision which, for the reasons set out below, I find to be unenforceable. Under *Waksdale*, if the For Cause Provision is unenforceable, that renders the whole of the Termination Provision unenforceable.

[36] Also, in *Horwitz*, the court did not consider the implications of the words "at any time" on the validity of the Termination Provision.

[37] The *Horwitz* decision is not binding on me because *Waksdale* changed the law and because the court in *Horwitz* did not consider the enforceability of the For Cause Provision or the implication of using the phrase "at any time".

The For Cause Provision is Unenforceable

[38] One of the main differences between the *ESA* and the *CLC* is that under the *ESA* the statutory minimum payments must be paid only unless there is "wilful employment misconduct"; whereas, under the *CLC* the statutory minimums apply unless there is "just cause" for termination. Read together, ss. 229.1 and 230(1) of the *CLC* provide that employees must be given notice of termination of employment unless there is just cause for their dismissal.

[39] The just cause standard under the *CLC* has been summed up as follows:

> Just cause may then be either serious misconduct justifying immediate termination or continued misconduct for which the employee was warned that a reoccurrence would lead to termination even though it does not warrant immediate dismissal. The warning constitutes progressive discipline. The employer has signified to the

> employee that the behaviour is unsatisfactory and that it will not tolerate a further instance of that or similar behaviour. The warning allows the employer to treat a further occurrence as a culminating incident and to summarily dismiss the employee for just cause.

See *Monk v. Vianet Inc.*, 2020 CanLII 8247 (CA LA), at para. 18.

[40] Just cause includes "serious misconduct, habitual neglect of one's duties, incompetence, conduct incompatible with one's duties or prejudicial to the employer's business, and wilful disobedience to the employer's orders in a matter of substance": *Lewis v. Whiteline Trucking Ltd*, 2018 CanLII 72555 (CA LA), at para. 16.

[41] Just cause is conduct which is incompatible with the employee's duties and goes to the root of the contract with the result that the employment relationship is too fractured to continue: *Leung v. Doppler Industries Incorporated*, [1995] B.C.J. No. 690 (B.C.S.C.), at para. 26, aff'd [1997] B.C.J. No. 382 (B.C.C.A.).

[42] Even in cases of dishonesty, determining whether there is just cause requires an assessment of the context. The employer's response must be proportional to the misconduct: *McKinley v. BC Tel*, 2001 SCC 38, [2001] 2 S.C.R. 161, at paras. 48 to 57.

[43] For ease of reference, I reproduce the For Cause Provision here:

> **By CIBC for Cause** – CIBC may terminate your employment at any time without advance notice, or pay in lieu of notice, for Cause. Cause includes, but is not limited to, dishonesty, fraud, breach of trust, failure to perform your duties in a satisfactory manner, a breach of [CIBC's Code of Conduct], failure to obtain or maintain any required [Training Licenses and Accreditations], failure to complete the pre-employment screening process to the satisfaction of CIBC, providing false, misleading or inaccurate information during the hiring process, a breach of any other term or condition of your employment, and any act or omission recognized as Cause under applicable law. If your employment is terminated for Cause, you will have no entitlement to any notice of termination, payment in lieu of notice of termination, severance or any other damages whatsoever.

[44] The For Cause Provision does not define cause. The Plaintiffs submit that the term "Cause" is ambiguous and the provision is unenforceable because it purports to allow CIBC to withhold statutory entitlements based on this undefined term.

[45] CIBC submits that "cause" in the For Cause Provision means "just cause" under the *CLC*.

[46] The employment contract is to be interpreted with a view to ascertaining the objective intention of the parties by considering the language used in and the context of the contract:

> The goal is not to imagine how the contract can be construed at its conclusion with a pre-determined goal of finding a means to avoid it entirely because one side finds

> it less generous than desired. The goal is always and everywhere to determine what was intended on a true and fair construction of the contract.

See *Oudin v. Le Centre Francophone de Toronto*, 2015 ONSC 6494, 27 C.C.E.L. (4th) 86, at para. 51, aff'd 2016 ONCA 514, 34 C.C.E.L. (4th) 271, leave to appeal refused, [2016] S.C.C.A. No. 391.

[47] The court is "not to disaggregate the words looking for any ambiguity that can be used to set aside the agreement": *Cook v. Hatch Ltd.*, 2017 ONSC 47, 40 C.C.E.L. (4th) 296, at para. 25. "The court should not strain to create an ambiguity where none exists. The question is whether there are two or more reasonable interpretations:" *Amberber v. IBM Canada Ltd.*, 2018 ONCA 571, 424 D.L.R. (4th) 169, at paras. 45 and 63, citing *Chilton v. Co-Operators General Insurance Co.* (1997), 32 O.R. 161 (C.A.), at p. 169.

[48] In this case, one does not need to search for ambiguity. The Termination Provision is unclear whether Cause refers to just cause under the *CLC* for three reasons. First, the For Cause Provision does not say "just cause". Second, and as set out below, the list contains items which may not be just cause. Third, and as set out below, it says that it includes **but is not limited to** "any act or omission recognized as Cause under applicable law."

[49] The Plaintiffs submit that even if CIBC intended "cause" to mean "just cause" under the *CLC*, the For Cause Provision is still unenforceable because many of the listed items would not constitute "just cause" as defined in the case law. I agree.

[50] There are cases decided under the *ESA* which stand for the proposition that if a termination provision contains a list of things for which an employee may be terminated and some of those things do not amount to wilful employment misconduct, the provision is unenforceable: *Perretta v. Rand A Technology Corporation*, 2021 ONSC 2111, 70 C.C.E.L. (4th) 85; *Tarras v. The Municipal Infrastructure Group Ltd.*, 2022 ONSC 4522, 2023 C.L.L.C. 210-010; *Henderson v. Slavkin et al.*, 2022 ONSC 2964, 81 C.C.E.L. (4th) 244; *Summers v. Oz Optics Limited*, 2022 ONSC 6225, aff'd 2023 ONSC 5558; *Dufault v. The Corporation of the Township of Ignace*, 2024 ONSC 1029, 93 C.C.E.L. (4th) 345, aff'd 2024 ONCA 915, 95 C.C.E.L. (4th) 1, leave to appeal to S.C.C. refused 2025 CanLII 51603; *Wilds v. 1959612 Ontario Inc.*, 2024 ONSC 3452, 2025 C.L.L.C. 210-002; *Baker v. Van Dolder's Home Team Inc.*, 2025 ONSC 952, 2025 C.L.L.C. 210-037, leave to appeal to Ont. C.A. granted M56047; *De Castro v. Arista Homes Limited*, 2025 ONCA 260, 95 C.C.E.L. (4th) 253.

[51] In the cases referred to in the preceding paragraph, it was clear that at least some of the items in the list would not amount to wilful employment misconduct. The present case presents a slightly different, but no less troubling problem.

[52] Most, if not all, of the items listed in the For Cause Provision are overly broad meaning they might or might not amount to just cause under the *CLC* depending on the context and surrounding circumstances. For example, "dishonesty" may not be just cause for dismissal: *McKinley,* at para. 48. Similarly, not every "breach of [a] term or condition of your employment" or every "breach of the Code [the *CLC*]" would constitute just cause. For example, the *CLC*

requires employees to treat others with respect. A single lapse in this regard would not likely amount to just cause under the *CLC*.

[53] *Asgari Sereshk v. Peter Kiewit Sons ULC*, 2021 BCSC 2570, is the only case to which I have been referred where a list contains items which may or may not violate the statutory minimum standard depending on the circumstances. The termination for cause provision in *Asgari* provided as follows:

> The Company may terminate your employment for just cause or serious reason, at any time, without any notice or pay in lieu of notice. "Cause or serious reason" for this purpose includes such things as serious misconduct and a false statement on either of your resume or employment application, as well as any other conduct which would constitute cause or serious reason at law. The failure by the Company to rely on this provision in any given instance or instances shall not constitute a precedent or be deemed a waiver.

Asgari, at para. 18.

[54] At paras. 87 and 88, the court considered and rejected the plaintiff's argument:

> The plaintiff also submits the clause is illegal in that it purports to say a person can be fired subject to the minimum in the *Act* for dishonesty, and that is contrary to the law, based on *McKinley v. BC Tel*, 2001 SCC 38 (S.C.C.).
>
> A plain reading of the clause defeats the plaintiff's argument. The termination clause does not purport to allow termination without just cause based on "dishonesty" alone. The clause reads "serious misconduct and false statement on either of your resume or employment application". This does not amount to a claim that dishonesty could be a standalone reason to justify termination.

[55] *Asgari* does not assist here because the court in *Asgari* did not address whether a termination provision that allows for termination for any dishonesty or other events that may not be just cause depending on the context and surrounding circumstances, is contrary to the *CLC* and therefore unenforceable. Unlike in *Asgari,* in the present case, the termination provision does not indicate that the items in the list are confined to serious misconduct that would justify immediate termination.

[56] The For Cause Provision here does not comply with the minimum statutory requirements. It violates the *CLC* because it is not clear that it only includes events that would be just cause under the *CLC*. Rather, it contains items that may not be just cause and is therefore broader than the concept of just cause under the *CLC*. The For Cause Provision does not specify that the acts which constitute Cause must be serious.

[57] Employees need to know with certainty when an employer can terminate their employment: *Machtinger* at pp. 990-91. Many employees will be unfamiliar with what constitutes just cause under the *CLC*. These employees may not seek to challenge CIBC when it relies on the For Cause Provision even in a case where the employee's conduct does not amount to just cause.

For example, an employee who has committed some isolated and insignificant act of dishonesty might not challenge a for-cause termination because the For Cause Provision says that CIBC may terminate their employment at any time without advance notice, or pay in lieu of notice for dishonesty and if their employment is terminated for Cause, they have no statutory entitlements whatsoever.

[58] Where an employment contract defines cause more broadly than the statute, and therefore permits termination without notice in circumstances where the statute prohibits it, the contract breaches the statute: *De Castro,* at para. 7.

[59] The For Cause Provision uses disjunctive language: "Cause includes, but is not limited to,…[the listed items]". This wording is open-ended and suggests there are more unidentified and unknown items which are included in the definition. Also, the fact that "Cause under applicable law" is contained in the list suggests that the other items in the list are something more or other than "Cause under applicable law".

[60] The result is that the Termination Provision defines cause more broadly than the statute because it includes more than the listed items and suggests that there are things other than "Cause under applicable law" that would enable the employer to terminate without paying the statutory minimums. The provision is ambiguous because an employee reading it would not know what other conduct might justify the employer withholding the statutory minimum payments on termination.

[61] I note that in CIBC's Variable Compensation Plan, effective November 1, 2021, pursuant to which the Plaintiffs were paid commissions and bonuses, there are different definitions of "misconduct", and "Termination for Cause" than those found in the employment agreement:

> **Misconduct** - Circumstances sufficient for a termination of employment for cause involving: (i) serious misconduct; (ii) fraud; (iii) a material breach of the terms and conditions of employment; (iv) willful breach of the provisions of CIBC's Code of Conduct of sufficient gravity to justify the application of this term; (v) the failure or willful refusal to substantially perform the employee's material duties and responsibilities; (vi) the conviction of the employee for any crime involving fraud, misrepresentation or breach of trust; or (vii) any other circumstances sufficient for a termination of employment with cause including under Termination for Cause.
>
> **Termination for Cause** - The termination of an employee's employment as a result of any action by the employee which by itself constitutes, or a series of actions which collectively constitute, misconduct, fraud, dishonesty, incompetence, unsatisfactory performance that persist after fair warning of the same, falsification of records, sabotage, conviction of a criminal offense, or any material breach of the terms and conditions of an employment agreement or termination for cause.

[62] These definitions in the Variable Compensation Plan are not tied to termination provisions in the Plaintiffs' employment contracts and are contradictory to the For Cause Provision in so far

as they contain different definitions of cause. They do not assist CIBC regarding the unenforceability of the For Cause Provision.

[63] I find that the For Cause Provision violates the *CLC* because it is ambiguous and defines cause more broadly than the judicial interpretation of just cause under the *CLC.* It includes events that would not amount to just cause under the *CLC*. Therefore, the For Cause Provision permits termination without notice in circumstances where the statute prohibits it. The employment agreement breaches the statute and is unenforceable.

The Without Cause Provision

[64] The Plaintiffs submit that the Without Cause Provision is also unenforceable because it provides for termination "at any time" and this provision is contrary to the *CLC*.

[65] As set out above, in *Horwitz*, the Divisional Court found that the Without Cause Provision was enforceable but did not consider the words "at any time".

[66] In *Dufault* the court considered an employment contract providing for termination "at any time". The court found the contract violated the *ESA* which prohibits termination at the conclusion of an employee's leave or in reprisal for attempting to exercise a right under the *ESA*: at para. 46. *Dufault* was appealed, and the Court of Appeal decided the appeal solely on the basis that the contract defined cause more broadly than "wilful misconduct" under the *ESA*: at para. 10. The Court of Appeal did not address the "at any time" language.

[67] In *Baker*, this court followed *Dufault* in holding that a provision allowing for termination "at any time" violates the *ESA*: at paras. 9-10 and 12.

[68] The Defendant relies on eight other cases where termination provisions containing "at any time" or "for any reason" were upheld.[1] Only *Egan* was decided under the *CLC*; the other cases were decided under the *ESA*. All of the cases except *Egan* were decided before *Dufault*. None of the cases including *Egan* specifically considered the phrases "at any time", "for any reason" or any similar language. Also, in all of the cases, the termination provisions referentially incorporated the statutory standards.

[69] There are three recent cases that consider the words "at any time": *Jones v. Strides Toronto*, 2025 ONSC 2482, *Li v. Wayfair Canada Inc.*, 2025 ONSC 2959, and *Chan v. NYX Capital Corp*, 2025 ONSC 4561. *Jones* was released on April 23, 2025, *Li* was released on July 9, 2025, and,

---

[1] *Egan v. Harbor Air Seaplanes LLP*, 2024 BCCA 222, 95 B.C.L.R. (6th) 28 at para. 6; *Rodden v. Toronto Humane Society,* 259 D.L.R. (4th) 89 (Ont. C.A.) at para. 55; *Singh v. Adecco Employment Services*, 2019 ONSC 1512, at para. 2; *Burton v. Marinovich McCauley Rollo LLP*, 2018 ONSC 3018, 2018 C.L.L.C. 210-057, at para. 6; *Gracias v. Dr. David Walt Dentistry*, 2022 ONSC 2967, 79 C.C.E.L. (4th) 224, at para. 57; *Nutting v. Franklin Templeton Investments Corp.*, 2016 ABQB 669, 46 Alta. L.R. (6th) 375, at para. 5: *Repose v. CA Canada Company*, 2018 ONSC 4226, 49 C.C.E.L. (4th) 329, at para. 14; *Shultz v. Precocious Technology Inc., dba Clearent*, 2022 BCSC 1420, 2023 C.L.L.C. 210-014, at para. 21.

Chan was released on August 6, 2025. After the hearing of this matter, I received written submissions from the parties regarding *Li* and *Chan*.

[70] In *Jones*, Moore J. found that "the *Dufault* decision does not stand for the proposition that the words 'at any time' divorced from 'sole discretion' are improper in an employment contract" and that the inclusion of "at any time" in the termination provision did not bring it into conflict with the *ESA*. Moore J. found the termination provision was unenforceable because it did not provide for a continuation of benefits as required by the *ESA*.

[71] In *Li*, Dow J. upheld a for cause termination provision that contained the words "at any time" and distinguished *Dufault* because in *Dufault* the definition of cause did not refer to the *ESA* and in *Li* the termination provision did contain a definition of cause that reflected the provisions of the *ESA*: "'Cause' means any willful misconduct, disobedience, or willful neglect of duty that is not trivial and has not been condoned by the company and that constitutes 'cause' under the ESA".

[72] In *Chan*, like in *Baker*, Parghi J. followed *Dufault* and found a termination provision to be unenforceable because the provision allowed for termination "at any time without cause," contrary to the ESA: at para. 12.

[73] Unlike the *ESA* (which prohibits termination after a leave or as a reprisal), the *CLC* offers more substantial protection against dismissal "at any time." The *CLC* goes further than the *ESA* because under the *CLC*, there must be a valid reason for the termination such as a restructuring. If the termination is unjust, the employee may be reinstated: s. 242.

[74] In *Wilson*, the court explained at para. 63 that an interpretation that allowed an employer to dismiss an employee without reasons, so long as it complied with the *CLC*, flouted the purpose and intent of the *CLC*:

> In fact, the foundational premise of the common law scheme — that there is a right to dismiss on reasonable notice without cause or reasons — has been completely replaced under the Code by a regime requiring reasons for dismissal. In addition, the galaxy of discretionary remedies, including, most notably, reinstatement, as well as the open-ended equitable relief available under s. 242(4)(c), are also utterly inconsistent with the right to dismiss without cause. If an employer can continue to dismiss without cause under the Code simply by providing adequate severance pay, there is virtually no role for the plurality of remedies available to the adjudicator under ss. 240 to 245.

[75] The *ESA* ~~as~~ operates in tandem with the presumptive common law contractual right of an employer to dismiss an employee with notice by creating minimum notice and severance protections, whereas the *CLC* displaces the common law employer right to dismiss an employee by creating a statutory framework for dismissal.

[76] Saying that an employee whose employment is subject to the *CLC*, can be terminated "at any time", is even more misleading under the *CLC* than it is under the *ESA*. An employee whose

termination was for no reason at all reading the Without Cause Provision, might well not challenge the termination thinking that CIBC could terminate without any justifiable reason or indeed for an unjust one. Under the *CLC* courts have found the following reasons to be unjust: a lack of progressive discipline: *Re Palethorpe and God's Lake First Nation*, 2005 CLB 14456; *Bird v. White Bear First Nation*, 2017 FC 477, 2017 C.L.L.C. 210-044, at para. 27, aff'd *White Bear First Nation v. Bird*, 2021 FCA 50:, no proof of misconduct: *Huron Commodities Inc. v Alexander*, 2019 CanLII 11915 (CA LA) and poor performance falling short of gross misconduct: *Smith v I.M.P. Group Limited*, 2018 CanLII 147165 (CA LA).

[77] I do not need to decide whether the Without Cause provision is unenforceable because it provides for termination "at any time" contrary to the *CLC* because I have found that the With Cause Termination Provision is unenforceable and therefore the entire termination provision is invalid.

ISSUE 2: Does the saving provision save the Termination Provision?

[78] The Saving Provision provides:

> Compliance with Legislation – CIBC will comply with all requirements of applicable employment standards legislation. If any of the above Termination of Employment provisions do not conform to the notice and severance requirements of applicable employment standards legislation, the statutory minimums shall apply and be considered reasonable notice and severance.

[79] A saving provision which is designed to make a termination provision compatible with future changes to the *ESA* cannot "reconcile a conclusory provision that is in direct conflict with the *ESA* from the outset": *Rossman v. Canadian Solar Inc.*, 2019 ONCA 992, 444 D.L.R. (4th) 131, at para. 35. For similar reasons to those set out above at para. 22, this consideration applies equally to the *CLC*

[80] In *Rossman* the court, at para. 40, explained the policy rational:

> In this context, saving provisions in termination clauses cannot save employers who attempt to contract out of the ESA's minimum standards. Holding otherwise creates the risk employers will slip sentences, like the four-week benefits clause, into employment contracts in the hope that employees will accept the terms. This outcome exploits vulnerable employees who hold unequal bargaining power in contract negotiations. Moreover, it flouts the purpose of the ESA – to protect employees and to ensure that employers treat them fairly upon termination: *Machtinger*, at pp. 1002-3.

[81] The proper use of a saving clause is to safeguard against changes to the legislation made after the contract is concluded: *Perretta,* at para. 57; *Wilds,* at paras. 64-65.

[82] It is one thing to draft a termination provision which complies with the statutory minimum requirements and contains a provision that incorporates future statutory amendments, it is quite

another to attempt to save a termination provision which violates the statutory requirements: *Rossman,* at paras. 31-35.

[83] As set out above, employers must have incentive to comply with the *CLC*'s minimum requirements. They cannot be permitted to capitalize on the fact that many employees are unaware of their legal rights and may not challenge a termination provision.

[84] In this case, as in *Rossman*, the Termination Provision violates the *CLC*.

[85] I find that the Saving Provision cannot be reconciled with the For Cause Provision or the Without Cause Provision. The Saving Provision does not save the Termination Provision which is unenforceable.

[86] I find that the whole Termination Provision is unenforceable and the presumption that the Plaintiffs are entitled to common law notice is not rebutted.

ISSUE 3: What is the reasonable notice in this case?

[87] The purpose of awarding reasonable notice is to afford the employee an opportunity to find comparable employment: *Paquette v. TeraGo Networks Inc*., 2015 ONSC 4189 ("*Paquette* (ONSC)*")*, 2015 C.L.L.C. 210-056, at para. 29, aff'd 2016 ONCA 618 (*"Paquette* (ONCA)").

[88] There is no golden rule or standard number of months' notice per year of service. What is reasonable depends on the circumstances of the case and requires an individualized approach: *Paquette* (ONSC), at para. 28.

[89] In determining the period of reasonable notice, the court considers many factors including: the employee's years of service, age, the character of the employment and the availability of comparable alternate employment: *Machtinger,* at pp. 998-999, citing *Bardal v. Globe & Mail Ltd.* (1960), 24 D.L.R. (2d) 140, (Ont. C.A.).

[90] As a general rule, employees who are specialized and highly compensated are entitled to more notice: *Milwid v. IBM Canada Ltd.*, 2023 ONSC 490, 85 C.C.E.L. (4th) 243, at paras. 35, 38 and 43, aff'd 2023 ONCA 702, 487 D.L.R. (4th) 312.

[91] Employees who must build a book of business to achieve a similar level of income in new employment may be entitled to more notice: *King v. Merrill Lynch Canada Inc.*, [2005] O.J. No. 5028 (Ont. S.C.J.), at paras. 152 and 155.

[92] Salespeople do not necessarily move easily to different industries: *Devlin v. High Liner Foods Incorporated*, 2019 ONSC 6897, at paras.13-15.

[93] Economic factors affecting the employee's vocation may justify a longer notice period: *Paquette* (ONSC), at para. 27.

[94] Each of the Plaintiffs was a Mobile Investment Consultant which was a sales-based role. They were responsible for "advising clients through purpose driven conversations to help them achieve their long-term ambitions". They did not have formal managerial responsibilities.

[95] In their affidavits, each Plaintiff says that they were responsible for managing and selling CIBC's investment products and services. Their role was primarily focused on internal sales. They also advised clients. On a day-to-day basis, they focused on financial planning for CIBC-customers, offering them a portfolio of CIBC-products to choose from, and encouraging them to transfer their accounts to CIBC from other institutions. Mr. Ghazvini testified that he also did some training or coaching to assist other advisors.

[96] Each Plaintiff admitted in their cross-examinations that their skills are transferable.

[97] The Plaintiffs submit that there was limited available alternate employment. CIBC fired hundreds of other MICs who diluted the applicant pool and made it more difficult to secure new employment. They say comparable employment in the "investment sphere" was scarce. There were no other MIC roles in the industry and this role appears to be unique to CIBC.

[98] The Plaintiffs each spent years building a book of business at CIBC but were unable to take their clients with them when they left CIBC because their employment contracts include restrictive covenants.

[99] The Plaintiffs say that working in the investment industry involves long-term relationship building and they would not be able to obtain a new position at a comparable salary unless they had an existing "book of business"; however, their employment contracts prohibit them from soliciting any of the clients with whom they dealt at CIBC, which puts them at a competitive disadvantage.

[100] There is no evidence in the record that the Plaintiffs were not offered other positions because they did not have a book of business. However, sales positions in the financial industry which have compensation based solely on commissions would not be comparable in these circumstances.

[101] I accept the Plaintiffs' evidence that there was limited alternate comparable employment available to them.

Mr. Ghazvini's Reasonable Notice

[102] Mr. Ghazvini submits that eight months' notice is reasonable notice of the termination of his employment.

[103] CIBC submits that, if Mr. Ghazvini is entitled to reasonable notice, the notice period should be in the range of four to six months.

[104] Mr. Ghazvini worked for CIBC for just over 4.5 years. He was 38 years old when his employment was terminated.

[105] Before joining CIBC Mr. Ghazvini was employed at TD Bank for approximately 2.5 years; first as a teller and then as a financial services representative.

[106] Mr. Ghazvini has a bachelor's degree in information technology, an Investments Funds Canada license and was licensed by the Mutual Fund Dealers Association while employed at TD Bank and CIBC. He does not have a Personal Financial Planner designation.

[107] Considering all of these factors, I find that seven months' is reasonable notice of termination for Mr. Ghazvini.

Ms. Rose's Reasonable Notice

[108] Ms. Rose submits that 12 months' notice is reasonable notice of the termination of her employment.

[109] CIBC submits that, if Ms. Rose is entitled to reasonable notice, the notice period should be in the range of six to eight months.

[110] Ms. Rose worked for CIBC for approximately 5.5 years. She was 54 years old when her employment was terminated.

[111] Before joining CIBC, Ms. Rose was employed at Primerica Financial Services for 15 years.

[112] Ms. Rose's education is limited to a high school diploma and she is not qualified for some positions such as a senior advisor role at RBC because she does not have a Personal Financial Planner designation.

[113] Considering all of these factors, I find that 12 months' is reasonable notice of termination for Ms. Rose.

ISSUE 4: What are the Plaintiffs' damages in lieu of notice?

[114] The Plaintiffs submit that their damages include all forms of compensation they would have received during a period of working notice including: 2022 Annual Bonus and pro-rated base salary, Variable Incentive (i.e. commissions), 2023 Annual Bonus, pension coverage and benefits.

[115] CIBC submits that, if the Plaintiffs are entitled to damages in lieu of notice, these damages do not include Variable Incentive or Annual Bonus amounts because the parties contracted out of these entitlements. CIBC also submits that the Plaintiffs are not entitled to damages for lost pension coverage because they have not proven this claim.

[116] Damages for wrongful dismissal include compensation for losses arising from the employer's failure to give notice as required. These damages include all compensation and benefits that the employee would have earned during the notice period: *Paquette* (ONCA) at para. 16 citing *Sylvester v. British Columbia*, [1997] 2 S.C.R. 315, at para. 1 and *Davidson v. Allelix Inc.* (1991), 7 O.R. (3d) 581 (Ont. C.A.), at para. 21.

[117] The purpose of awarding damages is to put the Plaintiffs in the position they would have been in had they worked through the period of reasonable notice: *Matthews v. Ocean Nutrition Canada Ltd.*, 2020 SCC 26, [2020] 3 S.C.R. 64, at para. 48; *Paquette* (ONCA) at para. 16.

Annual Bonus for 2022

[118] CIBC submits that the Annual Bonus is based on active employment, individual performance, manager discretion, as well as the performance of CIBC, of the specific business unit, and the line of business. An individual's performance is evaluated based on eligible volumes and the performance drivers defined in the MIC's GPS performance goals and is also evaluated relative to peers. The MIC Plan provides that "the Annual Bonus will take into account the MIC/MIS's overall effectiveness in providing clients with sound financial advice, the right sales practice behaviours, product mix, source mix and operational sales activities." Practically, this means financials were not the only consideration when assessing whether an MIC would be awarded an Annual Bonus.

[119] CIBC did not submit any evidence regarding the performance of CIBC, of the specific business unit, or the line of business.

[120] CIBC does not dispute that if the Plaintiffs are entitled to Annual Bonus for 2022 it should be based on their actual performance in FY2022.

[121] If a bonus plan requires an employee to be "actively employed" to be entitled to a bonus, the employee is entitled to the bonus if, had they been given proper working notice, they would have been actively employed when the bonuses were paid: *Paquette* (ONCA) at paras. 21 to 24 citing *Taggart v. Canada Life Assurance Co.* (2006), 50 C.C.P.B. 163 (Ont. C.A.), at para. 16. A contractual term that requires active employment when the bonus is paid is not sufficient to deprive an employee of a claim for damages for compensation for the bonus that they would have received during the notice period: *Paquette* (ONCA) at para. 47.

[122] At the end of each fiscal year the Plaintiffs were entitled to an Annual Bonus based on performance. The Annual Bonus consisted of two components: cash and restricted share units. There is no dispute the Plaintiffs received the restricted share units to which they were entitled for 2022.

[123] The Annual Bonus was paid in December each year.

[124] The Plaintiffs worked until October 7, 2022. The fiscal year end was October 31, 2022. Had the Plaintiffs been given reasonable notice of the termination of their employment, they would have been working in December 2022 when the 2022 Annual Bonus was paid. The Plaintiffs are entitled to damages to compensate them for their 2022 Annual Bonuses.

[125] The Annual Bonus was based on the volume of the employee's sales and the employee's individual performance according to the following Annual Bonus Matrix:

Eligible Sales Volume	Did Not Achieve Goals (bps)	Achieved Some Goals (bps)	Achieved All or Most Goals (bps)	Exceeded Goals (bps)
Tier 1 $0 to < $3M	0	0	0	0
Tier 2 $3 to < $4 M	0	20	60	85
Tier 3 $4 to < $5 M	0	25	70	95
Tier 4 > $5M	0	35	80	105

[126] The parties agree that each of the Plaintiffs would be in Tier 4 in 2022 because their Eligible Sales Volume exceeded $5 million.

[127] The Annual Bonus is calculated based on points for products sold by the Plaintiffs which are known as "bps".

[128] The number of bps in Tier 4 is 0, 35, 80 or 105 depending on the performance rating achieved.

Likely Performance Ratings

[129] CIBC says that it did not assess the Plaintiffs' performance for the 2022 fiscal year because the end of the year performance assessment was conducted after their terminations. Since the year end rating determines the quantum of any annual bonus, it is impossible to say with certainty what the Plaintiffs' bonuses would have been had they remained employed to the end of 2022.

[130] CIBC has provided calculations based on the assumption that Mr. Ghazvini's performance in 2022 would have been rated as "Achieved All or Most Goals".

[131] Mr. Ghazvini's performance in 2019 was rated as "Achieved Some Goals", in 2020 it was "Achieved Some Goals" and in 2021 it was "Exceeded Goals". In 2021 he was evaluated as having "great success in turning leads into sales".

[132] Mr. Ghazvini's evidence was that he believes that towards the end of his employment his performance continued to exceed expectations and he was on track for another rating of "Exceeded Goals" or at least "Achieved All or Most Goals". He believed this to be true based on his weekly one-on-one meetings with his Area Sales Manager ("ASM") Lisa Szell ("Ms. Szell") who routinely praised his performance and suggested that if he kept doing what he was doing there would be a "pot of gold at the end of the rainbow", meaning a large Annual Bonus. Ms. Szell did not make any suggestions to improve or do more than what he was already doing.

[133] CIBC has provided calculations based on Rose's performance in 2022 being "Achieved All or Most Goals".

[134] Ms. Rose's performance in 2019 was rated as "Achieved All or Most Goals", in 2020 and in 2021 it was "Exceeded Goals". In 2020 Ms. Rose's ASM Laurie Freedman ("Ms. Freedman") evaluated her performance as exceeding all of her core responsibilities and targets for the year. In both 2020 and 2021 Ms. Freedman said that Ms. Rose was the "go-to expert" on the team. In 2021 Ms. Rose was told that she had an amazing year and had demonstrated her ability to do all elements of the MIC role with excellence.

[135] On July 20, 2022, CIBC rewarded Ms. Rose with a Purpose Award 1000, which is an award for being among the highest performing among her peers. Freeman lauded her performance stating:

> Sandra had an outstanding Quarter and is on track for another stellar year. Sandra is currently #1 in total volume on the team and #1 in Total Managed Money Volume year to date. Sandra has been in the role for many years and went into this fiscal year with very aggressive targets. Sandra's year to date results are very impressive but even more impressive is what she has achieved this quarter.
>
> These outstanding results have happened in one of the most challenging financial markets that we have faced since the inception of the MIC role. This speaks to Sandra's exceptional skills around discovery, long term planning and using tools to ensure her clients achieve their long-term goals. On top of these outstanding results Sandra is a leader amongst the MIC team.

[136] On June 23, 2022, Ms. Rose's manager circulated an email indicating that she was one of three winners for the April 2022 Employee Advice Campaign, a Managed Money contest, of which she placed in the top three.

[137] Ms. Rose's clients almost unanimously rated her service to them as 10 out of 10.

[138] Ms. Rose's ASM praised her performance during their weekly meetings, and often told her that she was on track for another "exceeds rating" for 2020. The ASM's weekly emails to Ms. Rose showing her updated sales figures further suggested that she was on pace for another exceptional year.

[139] Ms. Rose believes that she would have been rated as "Exceeded Goals" on her fiscal 2022 performance review, but for her dismissal 3.5 weeks before the fiscal year end.

[140] The ASMs submit interim ratings for the employees they supervise. In cross-examination Mr. Mooney conceded that the ASMs' interim ratings are followed more than 50% of the time and that the ASMs are in a better position than he is to evaluate the Plaintiffs' performance.

[141] Their ASMs did not complete interim ratings for Mr. Ghazvini and Ms. Rose because their employment was terminated.

[142] I find that both Plaintiffs would likely have been rated as "Exceeded Goals" in their performance reviews had they not been terminated.

[143] I prefer the Plaintiffs' evidence over Mr. Mooney's evidence because Mr. Mooney was not the Plaintiffs' direct manager. Rather he was the manager for Ms. Szell and Ms. Freedman. Mr. Mooney was not involved in the discussions between the Plaintiffs and their ASMs. Mr. Mooney was not involved in any discussions regarding Mr. Ghazvini's or Ms. Rose's subjective performance. On cross examination he agreed that the performance of an individual MIC would only come to his attention if it was a problem and that did not happen with respect to Mr. Ghazvini or Ms. Rose.

[144] I accept Mr. Ghazvini's evidence regarding his assessment of his performance and the comments made to him by Ms. Szell. I also accept Ms. Rose's evidence regarding her own assessment of her performance, as well as the feedback she received from Ms. Freedman.

[145] Based on the feedback that Mr. Ghazvini and Ms. Rose received from their respective ASMs with respect to their performance in the first 11 months of the 2022 fiscal year, and the fact that neither had been disciplined, it is likely that they each would have achieved a rank of "Exceeded Goals".

Mr. Ghazvini's 2022 Annual Bonus

[146] The cash portion of Mr. Ghazvini's Annual Bonus for each of the following years as reflected on his pay stubs was as follows:

1) 2019: $14,077.65 (the actual amount on the pay stub is higher but reflects $10,866 paid in January 2019 part of the 2018 bonus which was withheld in error)

2) 2020: $3,911.29

3) 2021: $46,705.57

[147] Mr. Ghazvini's Eligible Sales Volume ("ESV") for the first 45 weeks of the 2022 fiscal year was $5,140,893 (i.e. over $5 million) and with a rating of "Exceeded Goals" he would receive 105 bps. With a rating of "Achieved All or Most Goals" he would receive 80 bps.

[148] Mr. Ghazvini extrapolated his actual ESV figure for 45 weeks to a 52-week period to be $5,940,587. Mr. Ghazvini believes his 2022 bonus would have been $62,376.16 if he "Exceeded Goals" (ESV x 0.0105), or $47,524.70 if he "Achieved All or Most Goals" (ESV x 0.0080).

[149] CIBC says that it did not assess Mr. Ghazvini's performance for the 2022 fiscal year because the end of the year performance assessment was conducted after his termination. Since the year end rating determines the quantum of any annual bonus, it is impossible to say with certainty what Ghazvini's bonus would have been had he remained employed to the end of 2022.

[150] CIBC says that if Mr. Ghazvini is entitled to an Annual Bonus for 2022, it would be $43,054.64. based on Mr. Ghazvini's ESV of $5,381,829 and using "Achieved All or Most Goals".

[151] Although Mr. Mooney's affidavit seems to suggest that he is basing his calculations on an extrapolated ESV of $5,381,829 he does not expressly state this and was not cross-examined on

it. Mr. Ghazvini's extrapolation is a straightforward mathematical calculation based on his actual ESV for the first 45 weeks of 2022. I accept that Mr. Ghazvini's extrapolated ESV of $5,940,587.

[152] Mr. Ghazvini is entitled to an Annual Bonus for the 2022 fiscal year in the amount of $62,376.16.

Ms. Rose's 2022 Annual Bonus

[153] The cash portion of Ms. Rose's Annual Bonus for each of the following years as reflected on her pay stubs was as follows:

1) 2019: $12,603.54

2) 2020: $17,813.06

3) 2021: $71,018.10

[154] Ms. Rose's Eligible Sales Volume ("ESV") for the first 44 weeks of the 2022 fiscal year was $8,031,464 (i.e. over $5 million) and with a rating of "Exceeded Goals" she would receive 105 bps.

[155] Ms. Rose extrapolated her actual ESV figure for 44 weeks to a 52-week period to be $9,491,730.

[156] Ms. Rose believes her 2022 bonus would have been $99,663 assuming she "Exceeded Goals" (ESV x 0.0105).

[157] CIBC says that if Ms. Rose is entitled to an Annual Bonus for 2022, it would be $71,324.97. based on Ms. Rose's ESV of $8,915,621.53 and using "Achieved All or Most Goals".

[158] Although Mr. Mooney's affidavit seems to suggest that he is basing his calculations on an extrapolated ESV of $8,915,621.53, he does not expressly state this and was not cross-examined on it. Ms. Rose's extrapolation is a straightforward mathematical calculation based on her actual ESV for the first 45 weeks of 2022. I accept that Ms. Rose's extrapolated ESV is $9,491,730.

[159] Ms. Rose is entitled to an Annual Bonus of $99,663 for the 2022 fiscal year.

Damages for notice period

Methodology

[160] There is no dispute that the Plaintiffs were compensated based on CIBC's fiscal year which ran from November 1st to October 31st.

[161] The Defendant submits that the easiest way to calculate damages is to look at the Plaintiffs' total compensation over a certain number of fiscal years prior to their terminations and determine the average annual compensation and apply that number to the notice period.

[162] The Plaintiffs submit that I should consider that certain components of their income were increasing over time and a simple averaging would undercompensate them.

[163] Courts sometimes use the average income in the three years prior to dismissal but there is no requirement to do so: *Clarke v. BMO Nesbitt Burns Inc.*, 2008 ONCA 663, 300 D.L.R. (4th) 313, at para. 35.

[164] In some cases using a three-year average is the best method to calculate what would likely have happened during the notice period. This is particularly true where income is fluctuating and there is no clear trend: *Nassar v. Oracle Global Services,* 2022 ONSC 5401, at paras. 44 to 48.

[165] The method chosen should best reflect the amount the plaintiff would have earned had employment continued during the notice period: *Evans v. Paradigm Capital Inc.*, 2018 ONCA 952, 51 C.C.E.L. (4th) 21, at para. 11.

[166] In this case, averaging would undercompensate the Plaintiffs because their incomes were on an upward trend.

Mr. Ghazvini's Income Trend

[167] Mr. Ghazvini says in his affidavit that he suspects that his performance would have continued along an upward trajectory into 2023 had his employment not been terminated. In his cross-examination he said that this belief is based on the relationships and leads he had.

[168] Mr. Ghazvini says that but for a drop in his annual bonus for 2020, his total annual compensation, comprised of salary, bonus, and commissions, increased linearly year after year:

1) 2019: $79,419.40

2) 2020: $84,339.22

3) 2021: $134,166.04

[169] The salary and commissions paid to Mr. Ghazvini in 2022 as of September 19, 2022, were approximately $75,000. Given the remaining 3.5 months of salary and commissions yet to be paid, coupled with his year-end bonus, he estimates that his total compensation paid during the 2022 calendar year would have dwarfed that of 2019 and 2020, and would have instead aligned with what he received in 2021.

[170] CIBC says Mr. Ghazvini's recent compensation at CIBC was as follows:

	FY[2]2019	FY2020	FY2021
Base Salary	$ 50,000.00	$ 50,000.00	$ 50,000.00
Variable Incentive	$ 12,616.58	$ 22,101.93	$ 44,031.99
Annual Cash Incentive	$ 10,500.79	$ 3,911.29	$ 46,205.57
Annual Equity Award	$ 10,393.11	$ 0.00	$ 14,591.23
Total:	$ 83,510.48	$ 76,013.22	$ 154,828.79

[171] Mr. Ghazvini also received an off-cycle RSA grant of $15,000 in 2021, as part of a promotional sales campaign. Ghazvini, along with all other CIBC employees, received a gratuitous $500 payment in 2021.

[172] CIBC submits that using a three-year average is appropriate to determine what Mr. Ghazvini's income would be. I do not agree.

[173] Whether one looks at the annual income or the fiscal year income, Mr. Ghazvini's income in 2021 and his extrapolated income in 2022 are significantly higher than his income in 2019 and 2020. In this case using a three-year average would seriously undercompensate Mr. Ghazvini.

[174] It is likely that Mr. Ghazvini's income would have increased again during the notice period.

[175] Mr. Ghazvini submits that his 2021 total annual compensation of $134,166 should be used to determine his damages during the notice period.

Ms. Rose's Income Trend

[176] Ms. Rose submits that, but for her dismissal, her performance and compensation would have continued along an upward trajectory from 2020 to 2022 into 2023 and beyond.

[177] Ms. Rose's annual compensation generally increased year after year, with a slight decline in 2020 due to a $10,000 drop in commissions:

1) 2019: $104,410

[2] FY means fiscal year.

2) 2020: $99,488

3) 2021: $171,251

[178] The salary and commissions paid to Ms. Rose in 2022, as of September 3, were slightly under $80,000. The remaining four months of salary, Variable Incentive (i.e., commissions), and 2022 fiscal year Annual Bonus were yet to be paid. She submits that her total compensation paid during the 2022 calendar year would have been approximately $219,600 (i.e., $50,000 salary + $70,000 commissions + $99,600 bonus) ("Projected 2022 Total Annual Compensation").

[179] Ms. Rose submits that her Projected 2022 Total Annual Compensation of $219,600 should be used to calculate her damages during the notice period.

[180] CIBC says Rose's recent compensation at CIBC was as follows:

	FY2019	**FY2020**	**FY2021**
Base Salary	$ 50,000.00	$ 50,000.00	$ 50,000.00
Variable Incentive	$ 36,056.45	$ 30,703.73	$ 48,391.73
Annual Cash Incentive	$ 12,603.54	$ 17,813.06	$ 70,518.10
Annual Equity Award	$ 9,563.74[1]	$ 26,719.58	$ 20,148.03
Total:	$ 108,223.73	$ 125,236.37	$ 189,057.86

[181] Ms. Rose also received an off-cycle RSA grant of $20,000 in 2021, as part of a promotional sales campaign. Rose, along with all other CIBC employees, received a gratuitous $500 payment in 2021.

[182] CIBC submits that it is appropriate to use a three-year average to determine Ms. Rose's damages during the notice period. I do not agree.

[183] Ms. Rose's income in 2021 and her extrapolated income in 2022 are significantly higher that her income in 2019 and 2020.

[184] It is likely that Ms. Rose's income would have stayed the same, or increased during the notice period.

[185] For the reasons set out below I reject the Defendant's averaging approach. I will consider each component of the Plaintiffs' compensation individually.

[186] Each of the Plaintiffs earned an annual salary of $50,000. They are each entitled to a pro-rated share of their annual salary during their respective notice periods.

[187] While they were employed the Plaintiffs were also entitled to Annual Bonus, Variable Incentive (i.e., commissions), a pension plan and benefits.

[188] In *Matthews* at para. 55, the Supreme Court of Canada confirmed the following two-step analysis applies when considering whether an employee is entitled to incentive compensation during the notice period:

1) Whether an employee would have been entitled to the bonus or benefits as part of their compensation during the reasonable notice period; and

2) If so, whether the terms of the employment contract or bonus plan unambiguously take away or limit that common law right.

[189] The Supreme Court in *Matthews* affirmed that language requiring "active employment" is not, on its own, sufficient to disentitle an employee to common law rights to damages: at para. 65.

Variable Compensation Plan/MIC Plan

[190] Each of the Plaintiffs was entitled to compensation under CIBC's Variable Compensation Plan, ~~was~~ also known as the MIC Plan (the "Plan"). The Plaintiffs' employment agreements specifically reference the Plan and a summary of the Plan is attached to the employment agreements.

[191] The compensation under the Plan which is relevant in this case includes Variable Incentive (i.e. commissions) and Annual Bonus for each of the Plaintiffs both for the last year of their employment i.e. November 1, until the termination of their employment on October 7, 2022, as well as during any period of reasonable notice.

[192] The Plan provides that in order to be eligible for compensation under the Plan an employee must be actively employed in the MIC role at the time of payment. The Plan also provides that if an employee's employment is terminated on a voluntary or involuntary basis (except if there is cause for termination) the following provisions apply:

> **Variable Incentive** - Eligible for Variable Incentive provided the information required to validate the sales activity or referral has been entered in the CRM prior to the employee's termination date provided eligibility requirements are met.
>
> **Annual Bonus** - Not eligible for Annual Bonus if termination date occurs before the payment date.

In addition to being actively employed at the time of payment, the Plan provides that employees must:

> Fully adhere to and comply with all CIBC and Line of Business policies, guidelines, frameworks, controls and procedures, including but not limited to the CIBC Code of Conduct and the CIBC Securities Inc. Compliance Policy Manual [and]

Attain a satisfactory Qualitative Assessment. (the "Additional Criteria").

[193] There was no evidence that either of the Plaintiffs were at risk of not meeting the Additional Criteria. Based on the evidence submitted concerning their past performance and lack of any discipline, I find that it is likely that both Plaintiffs would have met the Additional Criteria had they remained employed to the end of their respective notice periods.

[194] There is also no reason to find that, had the Plaintiffs been giving working notice, the information required to validate the sales activity or referral would not have been entered in the CRM ["Customer Relationship Management tool"] in the usual course and the eligibility requirements met.

[195] The Plaintiffs would have been entitled to the Variable Incentive as part of their compensation during the reasonable notice period; and the terms of the Plan do not unambiguously take away or limit that common law right.

Variable Incentive (i.e. Commissions) Calculations

Mr. Ghazvini's Variable Incentive

[196] Mr. Ghazvini does not know the amount of his Variable Incentive for each fiscal year, but his pay stubs reflect the Variable Incentive paid to him during the calendar years as follows:

1) 2019: $15,341.75

2) 2020: $30,427.93

3) 2021: $37,460.47

4) 2022 (year to date as of October 29, 2022): $50,374.82. Mr. Ghazvini extrapolates this to the end of the 2022 calendar year to be approximately $60,000.

[197] CIBC says that Mr. Ghazvini's average weekly commission for the 51 weeks that he could have earned commission for in the 2022 fiscal year was $1,075.57.

[198] CIBC submits that Mr. Ghazvini's average weekly Variable Incentive over the fiscal years 2020, 2021 and 2022 was $782.46 and his average weekly commission over his last three full fiscal years of service (i.e. 2019, 2020, 2021) was $504.81.

[199] CIBC says they paid Mr. Ghazvini for all eligible sales not entitled under the Plan. As set out above, Mr. Ghazvini is entitled to be compensated as though he actually worked through the notice period, in which case he would have been earning Variable Incentive.

[200] Using a three-year average would undercompensate Mr. Ghazvini because his Variable Incentive was on an upward trend.

[201] Given the significant upward trend in Mr. Ghazvini's Variable Incentive, it is likely that his 2023 Variable Incentive would exceed that ~~earned~~ in 2022. However, Mr. Ghazvini has limited his claim to a pro-rated share of his annualized 2022 Variable Incentive.

[202] I find it is appropriate to use Mr. Ghazvini's extrapolated Variable Incentive for 2022 of $60,000 to determine his damages for loss of Variable Incentive during the notice period.

Ms. Rose's Variable Incentive

[203] Ms. Rose also does not know the amount of her Variable Incentive for each fiscal year, but her pay stubs reflect the Variable Incentive paid to her during the calendar years as follows:

1) 2019: $41,807.14

2) 2020: $31,675.60

3) 2021: $50,233.54

4) 2022 (year to date as of October 29, 2022): $56,037.18. Extrapolated to the end of the 2022 calendar year this would be approximately $67,000.

[204] CIBC submits that Ms. Rose's average weekly Variable Incentive in the 2022 fiscal year was $1,276.17.

[205] CIBC submits that Ms. Rose's average weekly Variable Incentive over the fiscal years 2020, 2021, and 2022 was $932.41.

[206] CIBC submits that Ms. Rose's average weekly commission over her last three full fiscal years of service (i.e. 2019, 2020, 2021) was $738.15.

[207] CIBC submits that CIBC paid for all eligible sales not entitled under the Plan.

[208] Given the upward trend in Ms. Rose's Variable Incentive, it is likely that her 2023 Variable Incentive would exceed that in 2022. However, Ms. Rose has limited her claim to a pro-rated share of her annualized 2022 Variable Incentive.

[209] I find it is appropriate to use Ms. Rose's extrapolated commission for 2022 of $67,000 to determine her damages for loss of Variable Incentive during the notice period.

Annual Bonus for 2023

[210] The employment agreement and the Plan specifically state that employees are not eligible for an Annual Bonus if they are terminated with or without cause. This term is also highlighted in the Term Sheet that was available to both Mr. Ghazvini and Ms. Rose on CIBC's intranet. The Term Sheet not only highlights that active employment in the MIC role is required in order to be eligible for variable compensation under the Plan, it also specifically states that the Annual Bonus will not be paid if an individual is terminated with or without cause.

[211] Employers may contract out of the requirement to pay a portion of yearly bonus based on what an employee would have earned during a notice period if the contract is clear on its face: *Andros v. Colliers Macaulay Nicolls Inc.*, 2019 ONCA 679, 437 D.L.R. (4th) 546, at para. 52 citing *Paquette* (ONCA) at para. 31 and *Lin v. Ontario Teachers' Pension Plan Board*, 2016 ONCA 619, 402 D.L.R. (4th) 325, at para. 89.

[212] In this case the parties contracted out of the common law requirement to pay damages equal to a pro rata share of the Annual Bonus.

[213] Neither of the Plaintiffs is entitled to Annual Bonus during the notice period because the Annual Bonus is paid at the end of the calendar year. The Plan provides that the employees must be actively employed to receive the Annual Bonus. The Plan specifically provides that employees are not eligible for Annual Bonus if their termination date occurs before the payment date. Even if the Plaintiffs had worked through their respective notice periods, neither would have been working at the end of 2023 and neither would be entitled to the Annual Bonus for 2022. See *Bernier v. Nygard International Partnership*, 2013 ONSC 4578, 9 C.C.E.L. (4th) 41 at paras. 46-48; aff'd 2013 ONCA 780, 14 C.C.E.L. (4th) 155.

Pension and Benefits

[214] The Plaintiffs were eligible to participate in CIBC's group benefits.

[215] Generally, courts award employees a percentage of their income as compensation for benefits. Awarding an employee damages equal to the amount paid by the employer for the premium would not compensate the employee for their loss. Similarly, awarding an employee an amount equal to what they actually spent on services that would have been covered by the benefits plan may undercompensate employees who avoid incurring the expenses because they are not covered by their employer's plan.

[216] Ten percent of base salary is typically calculated to compensate employees for loss of benefits: *Cormier v. 1772887 Ontario Limited (St. Joseph Communications)*, 2019 ONCA 965, 58 C.C.E.L. (4th) 177, at para. 19; *Bergeron v. Movati Athletic (Group) Inc.*, 2018 ONSC 885, 2018 C.L.L.C. 210-033, at para. 49-51 and cases cited therein, aff'd 2018 ONSC 7258, 52 C.C.E.L. (4th) 32.

[217] CIBC agrees that ten percent of base salary is an appropriate way to calculate damages for loss of benefits in this case.

[218] The Plaintiffs were also entitled to participate in CIBC's Defined Benefit Pension Plan.

[219] The onus is on the Plaintiffs to quantify damages for lost pension benefits: *Ault v. Canada (Attorney General)*, 2011 ONCA 147, 88 C.C.E.L. (3d) 161, at para. 22, leave to appeal refused, [2011] S.C.C.A. No. 206.

[220] The Plaintiffs did not provide any evidence regarding the quantum of this loss. Instead, they submit that ten percent of base salary is appropriate compensation for loss of pension benefits.

[221] The Plaintiffs did not provide any authority for the proposition that there is a fixed percentage which is typically used to calculate pension losses. One method to calculate this loss would be to determine the difference in the present value of pension benefits that the Plaintiffs would have received had the employer made the contributions during the notice period, and the amount of pension benefits they will receive now as a result of the termination of their employment.

[222] The Plaintiffs have not proven damages for loss of pension benefits because they did not lead any evidence upon which I can calculate this loss.

[223] I do not award the Plaintiffs any damages for loss of pension benefits.

ISSUE 5: Did either Plaintiff fail to mitigate their damages by not pursuing other job opportunities?

[224] The parties agree as follows:

1) The Plaintiffs have an obligation to mitigate their damages by seeking alternate employment;

2) There is a high burden on the Defendant to prove that each of the Plaintiffs failed to mitigate;

3) The Plaintiffs did not earn other income during any period of reasonable notice; and,

4) Each of the Plaintiffs had an opportunity for other employment which they did not pursue.

[225] The Defendant says each of the Plaintiffs failed to mitigate. Each Plaintiff unreasonably declined a specific job opportunity and that is sufficient to establish that their efforts were unreasonable. In its oral submissions at trial CIBC did not otherwise take issue with the Plaintiffs' mitigation efforts.

[226] During the course of the hearing, the Plaintiffs argued that paragraphs 10 and 11 of the Affidavit of Jacqueline Lorraine Briand contain inadmissible hearsay. CIBC submitted that it was procedurally unfair for the Plaintiffs to raise their objection for the first time during the trial, when it was too late for the Defendant to address the objection by filing further evidence, calling a witness to give the evidence or cross-examining the Plaintiffs on the issue. The Defendants also submit that the same evidence is contained in Mr. Mooney's affidavit and in the termination letters provided to the Plaintiffs. I reserved my decision on the admissibility of this evidence.

[227] Generally, evidence based on information and belief in an affidavit is not admissible at trial and the best practice is for counsel objecting to the admissibility of statements contained in an affidavit to raise the objection when the affidavit is served.

[228] In this case, the impugned paragraphs relate to outplacement supports offered by CIBC to the Plaintiffs and the extent to which they made use of them. I find that these paragraphs are not

relevant because at the trial CIBC only took issue with the Plaintiffs' failures to pursue specific opportunities and not their mitigation efforts in general.

[229] In its written submissions CIBC did submit that the Plaintiffs failed to fully utilize the career transition services and outplacement support it provided. Even if CIBC were relying on these submissions and objecting to the Plaintiffs' mitigation efforts in general, CIBC has not proven that more robust efforts, or taking advantage of outplacement services would have enabled the Plaintiffs to mitigate their damages: *Southcott Estates Inc. v. Toronto Catholic District School Board*, 2012 SCC 51, [2012] 2 S.C.R. 675 at para 24 citing *Michaels v. Red Deer College*, [1976] 2 S.C.R. 324, at page 330 ; *Pateman v. Koolatron Corporation*, 2025 ONCA 224, para. 8. Therefore, the admissibility of paras. 10 and 11 is of no consequence.

[230] The Plaintiffs' position is that it was reasonable for them not to pursue the specific opportunities.

Mr. Ghazvini's Opportunity

[231] Mr. Ghazvini spoke to a former colleague who now works at TD Bank and was offered a role as a financial advisor. Mr. Ghazvini rejected the offer because it was a step down for him and paid approximately $60,000 with no commission which he estimated to be $50,000 to $60,000 less than what he earned at CIBC.

[232] CIBC says that Mr. Ghazvini was qualified for and had the right skills for the position at TD Bank and therefore his damages should be capped at 3 months when he had the TD Bank offer.

[233] CIBC relies on *Whiting v. First Data and Can Merchant Solutions ULC.*, 2011 BCSC 881, 96 C.C.E.L. (3d) 137. In *Whiting*, the court found that an employee who turned down a position that would have resulted in just over $50,000 less remuneration failed to mitigate. *Whiting* is distinguishable because there, the employee turned down the only available comparable alternate employment. At paras. 23 and 24, the court said:

> The plaintiff's reasons for declining the TD Bank offer were the inability to earn unlimited commissions, and the loss of his title as director of sales. However, when faced with the prospect of earning no income and benefits, or earning close to $100,000.00 income plus benefits, I think a reasonable person would choose the latter. Similarly, when faced with the prospect of not working in one's chosen field, or working in that field for $50,000.00 less over 8 months, I think a reasonable person would choose the latter.
>
> The plaintiff had no plan for the future and gave no reason why refusing employment with TD Bank during the notice period was in his best interest, either financially or career wise. Presumably, he was holding out for higher income or more titular status, but on the evidence before me, there seemed little or no chance of that happening, as the plaintiff appeared to have taken no steps toward achieving that end.

[234] Unlike the employee in *Whiting,* it was not unreasonable for Mr. Ghazvini to hold out for a better opportunity.

[235] After Mr. Ghazvini decided not to pursue the TD Bank offer, he pursued other opportunities and applied for eight other positions at financial institutions. It was not unreasonable for Mr. Ghazvini to decline the TD Bank offer to pursue a position that was more comparable to the one he held at CIBC.

[236] CIBC has not proven that Mr. Ghazvini failed to mitigate his damages.

Ms. Rose's Opportunities

[237] In February 2023 Ms. Rose met with a mortgage advisor at Royal Bank of Canada ("RBC"). They discussed a mortgage advisor role, duties and pay. Ms. Rose did not pursue the role because it was a 100% commission-based role, with no guaranteed income.

[238] Ms. Rose also considered returning to her previous employer Primerica. Ms. Rose's husband has worked at Primerica for 26 years and currently works in a senior role as Regional Vice-President. Ms. Rose's husband told her that she would not be qualified to work at Primerica because job applicants must disclose if they are a defendant in any ongoing litigation, and that being named as a defendant would automatically disqualify her.

[239] The Primerica job application asked if applicants are currently a defendant in any civil proceeding. At the time, Ms. Rose was about to be named as a defendant in a forthcoming lawsuit. Ms. Rose was not actually named as a defendant in a lawsuit until April 21, 2023.

[240] The Primerica position would also be a 100% commission-based role with no base salary.

[241] Ms. Rose did not apply for a position with Primerica because of her husband's advice regarding disclosing the forthcoming lawsuit and because she did not have a book of business to take to Primerica.

[242] On her cross-examination Ms. Rose agreed that, but for the lawsuit, had she applied to Primerica she could have started working at Primerica immediately. She said she did not know what she would earn because it takes time to build a book of business and she was not allowed to take any clients from CIBC so her income could have been zero or it could have been more than what she earned at CIBC.

[243] CIBC says that because Ms. Rose had not yet been sued, she could have applied for the position at Primerica and answered the question about outstanding litigation in the negative. CIBC says Ms. Rose failed to mitigate by not pursuing a job at Primerica and her damages should be reduced to zero.

[244] It was not unreasonable for Ms. Rose to believe that she would not be qualified for the position at Primerica, particularly given her husband's advice to this effect. In any event, both positions offered commissions only with no base salary. It was not unreasonable for Ms. Rose to decline to pursue these opportunities which may well have resulted in little or no income for a

substantial period of time while she built her book of business while complying with the restrictive covenant in the employment agreement.

[245] I find it was reasonable for Ms. Rose not to pursue the opportunities at Primerica and RBC. CIBC has not proven that Ms. Rose failed to mitigate her damages.

CONCLUSION ON DAMAGES

[246] Mr. Ghazvini is entitled to damages in lieu of seven months' notice of termination of employment less the working notice and any amounts already paid by CIBC in lieu of notice.

[247] Mr. Ghazvini's damages in lieu of compensation during the notice period are to be calculated based on: 1) base salary of $50,000, 2) Variable Incentive of $60,000, and 3) 10% of base salary for benefits.

[248] Mr. Ghazvini is entitled to damages of $62,376.16to compensate him for his 2022 Annual Bonus.

[249] Ms. Rose is entitled to damages in lieu of 12 months' notice of termination of employment less any working notice and any amounts already paid by CIBC in lieu of notice.

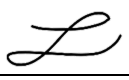
[250] Ms. Rose's damages during notice period are to be calculated based on her prorated entitlements to 1) base salary of $50,000, 2) Variable Incentive of $67,000, and 3) 10% for benefits.

[251] Ms. Rose is entitled to damages of $99,600 to compensate her for her 2022 Annual Bonus.

If I have made any errors in the calculations, the parties may arrange a case conference before me to make submissions regarding same.

COSTS

[252] I encourage the parties to agree on costs. If they cannot agree, I will consider brief written submissions. These costs submissions shall not exceed five pages in length, (not including any bill of costs or offers to settle). The Plaintiffs shall file their written submissions within ten days of the date of these reasons. The Defendant's responding submissions shall be delivered within five days of receipt of the Plaintiffs' costs submissions. Any reply submissions shall be delivered within three days of receipt of responding submissions and shall be no more than three pages long. Costs submissions shall be uploaded to CaseCenter and delivered to me by way of email to my Judicial Assistant.



Merritt J.

Released: September 25, 2025

CITATION: Ghazvini et al v. Canadian Imperial Bank Of Commerce, 2025 ONSC 5218
COURT FILE NO.: CV-22-00690999-0000
DATE: 20250925

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Ghazvini et al

Plaintiff/Applicant

– and –

Canadian Imperial Bank Of Commerce

Defendant/Respondent

REASONS FOR JUDGMENT

Merritt J.

Released: September 25, 2025