

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20260224**

**Docket: A-229-25**

**Citation: 2026 FCA 38**

[ENGLISH TRANSLATION]

**CORAM: LOCKE J.A.  
LEBLANC J.A.  
WALKER J.A.**

**BETWEEN:**

**IRENE BOUA**

**Applicant**

**and**

**CANADIAN IMPERIAL BANK OF COMMERCE (CIBC)**

**Respondent**

Heard at Toronto, Ontario, on February 24, 2026.

Judgment delivered from the bench at Toronto, Ontario, on February 24, 2026.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**LEBLANC J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the bench at Toronto, Ontario, on February 24, 2026.)

**LEBLANC J.A.**

[1] The applicant is seeking judicial review of two decisions of the Canada Industrial Relations Board (the Board), both dated June 18, 2025 (2025 CIRB LD 5689 and 2025 CIRB LD 5690). In those decisions, which have as their backdrop an unjust dismissal complaint (the Complaint) filed by the applicant against the respondent under subsection 240(1)

of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the Code), the Board ruled on a certain number of preliminary objections raised by both parties.

[2] First, the Board dismissed the applicant's objections that: (i) the Board did not have jurisdiction to hear the Complaint because she had not completed 12 consecutive months of continuous employment with the respondent, as required under paragraph 240(1)(a) of the Code; (ii) in any event, the arbitrator responsible for deciding the Complaint should recuse herself because she allegedly breached his duty of impartiality towards her; and (iii) the proceedings before the Board should be suspended pending resolution of the issue of bias by this Court. In contrast, the Board allowed the respondent's preliminary objection based on subparagraph 241.2(1)(a)(iii) of the Code, according to which the Complaint should be summarily rejected because it had been settled in writing between the parties during a mediation session held by the Board in the fall of 2022.

[3] The applicant asks us to intervene, being of the opinion that, in concluding as it did, the Board exceeded its jurisdiction, violated her procedural rights, showed obvious bias, and systematically misstated the evidence by referring, in particular, to [TRANSLATION] "repeated fallacious facts". However, she has not persuaded us to do so.

[4] On the issue of bias, this Court must determine, having regard to the record before it, whether the alleged breaches took place (*Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para. 54). A tribunal's impartiality is presumed. Any challenge to it is a serious allegation that cannot rest on mere suspicion or pure conjecture. On

the contrary, this type of argument must be “supported by material evidence demonstrating conduct that derogates from the standard” from the standpoint of a reasonable and right-minded person (*Arthur v. Canada (Attorney General)*, 2001 FCA 223 at para. 8; *Maritime Employers Association v. Longshoremen’s Union, Local 375 (Canadian Union of Public Employees)*, 2020 FCA 29 at para. 5; *Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369 at pp. 394–395). Here, there is no evidence of this nature before us in the record, nor was any such evidence adduced before the Board, which had nevertheless given the applicant every opportunity to support this allegation.

[5] The memorandum of fact and law the applicant submitted before us does indeed contain details of what caused her to question the Board’s impartiality towards her. However, there is no evidence in the record supporting what the applicant says on this matter. These statements therefore remain essentially unsubstantiated allegations on which the Court cannot rely to determine the merits of the bias argument. As this Court has recently noted, it is not appropriate to put evidence before it by means of a memorandum of fact and law (*Qualizza v. Canada*, 2025 FCA 222 at para. 14). On judicial review, the evidentiary basis for the arguments put forward by the parties in their memoranda must be found in the record of either the applicant or the respondent filed under Rules 309 and 310 of the *Federal Courts Rules*, SOR/98-106, failing which it may not be considered (*Rémillard v. Canada (National Revenue)*, 2022 FCA 63 at para. 56). Once again, evidence relating to the allegation of bias is completely absent in this case, which is sufficient to reject this argument.

[6] As for the Board decisions based on paragraph 240(1)(a) and subparagraph 241.2(1)(a)(iii) of the Code, they are reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (*Vavilov*)). This is a deferential standard, which invites the Court to consider whether these decisions are based on internally coherent reasoning and whether they are justified in relation to the applicable legal and factual constraints (*Vavilov* at paras. 84–85). Our role here—and it is important to remember it—is not to reassess the evidence on record and substitute our own conclusions for those of the Board on these two issues.

[7] With respect to her argument that she had not completed 12 consecutive months of continuous employment for the respondent as required under paragraph 240(1)(a), the applicant claims that the Board’s decision contradicts its prior decisions on this issue. This argument is without merit, for two reasons. First, the applicant confuses the role of the Board and that of “labour affairs officers” at Employment and Social Development Canada, the department that receives complaints made under section 240 of the Code, attempts to reconcile the parties and, where that fails, refers the complaints to the Board. These are two different entities, with distinct roles. In other words, decisions from “labour affairs officers” do not bind the Board. In any event, in this case the department ultimately sent the Complaint to the Board, being of the view that the issue of the Complaint’s admissibility was within the jurisdiction of the Board, not of its “labour affairs officers”.

[8] Second, as the Board noted, the applicant’s argument in this respect is surprising, to say the least, as it was raised in March 2025, nearly three years after the Complaint was filed, and is

in direct contradiction with the position the applicant had defended until then, namely, that she had completed 12 consecutive months of continuous employment for the respondent from February 24, 2021, to March 28, 2022. This Court has previously stated that it is unacceptable for a party to raise a jurisdictional issue after receiving or anticipating an adverse decision (*Grain Workers Union, Local 333 v. Prince Rupert Grain Ltd.*), [1987] 3 F.C. 479 (F.C.A.). In this case, the moment this argument was raised for the first time coincides with the Board's case management decision to proceed with the analysis of the respondent's preliminary objection based on the existence of a settlement. Indeed, this did not go unnoticed by the Board (2025 CIRB LD 5689 at pp. 12–13). In light of the record before it, the Board's decision to reject the applicant's preliminary objection based on paragraph 240(1)(a) was wholly reasonable.

[9] As for whether a settlement of the Complaint occurred, the applicant asks us to find that no settlement was reached through mediation on November 25, 2022. As evidence of this, she points to the fact that, in the weeks following that mediation session, the Board reactivated the file given the absence of a settlement. That is undeniable, but it misses the point of the issue the Board was being asked to decide and that the respondent raised at the earliest opportunity, which was whether, on November 25, 2022, there was an exchange of consents between the parties on a counteroffer to settle the Complaint, even if, in the hours and days that followed, the applicant refused to sign the agreement. To this end, the Board had to assess contradictory evidence and credibility issues and draw inferences based on the applicable legal framework, including the law governing transaction contracts set out in the *Civil Code of Québec*, CQLR c. CCQ-1991. The Board's task in this regard was largely fact-based. In such matters, the Court will intervene only in “exceptional circumstances” as it is not its role to question the Board's conclusions of facts or,

above all, to substitute its own assessment of the evidence for the Board's (*Vavilov* at para. 125). Here, we see no such circumstance tainting the Board's findings on this issue.

[10] Finally, the applicant did not pursue her challenge of the Board's decision not to suspend the proceedings on the basis that this issue has now become moot.

[11] In short, we are all of the view that this application for judicial review must fail. The applicant, who has asked for costs if she is successful, would like to be immune from an order to pay costs if her application fails. However, we see no reason in this case to diverge from the general rule that costs should be awarded on the basis of the outcome of the proceeding. The respondent will therefore be entitled to its costs.

“René LeBlanc”

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J.A.

Certified true translation  
Vera Roy, Senior Jurilinguist

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-229-25

**STYLE OF CAUSE:** IRENE BOUA v. CANADIAN  
IMPERIAL BANK OF  
COMMERCE (CIBC)

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 24, 2026

**REASONS FOR JUDGMENT OF THE COURT BY:** LOCKE J.A.  
LEBLANC J.A.  
WALKER J.A.

**DELIVERED FROM THE BENCH BY:** LEBLANC J.A.

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