KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 94**

Date: **2026 05 01**
File No.: KBG-RG-01114-2024
Judicial Centre: Regina

BETWEEN:

HARIS KHAN

PLAINTIFF

- and -

STUDENTS' UNION OF THE UNIVERSITY OF REGINA INC.

DEFENDANT

Counsel:

Logan Salm	for the plaintiff
Michael Scott and Jesse Stanich	for the defendant

JUDGMENT — MORRIS J.
May 1, 2026

I. INTRODUCTION

[1] Haris Khan applies for summary judgment in his wrongful dismissal action against the Students' Union of the University of Regina Inc. [URSU].

[2] Mr. Khan requests damages equivalent to 12 months' pay, moral damages, punitive damages, damages for relocation costs, pre-judgment interest, and costs of the action.

[3] URSU requests that the action be dismissed, with costs, on the basis that it had just cause to terminate Mr. Khan's employment. In the alternative, it requests that any damages award be substantially reduced based on the income Mr. Khan earned from alternate sources following his dismissal.

[4] During the hearing, counsel confirmed that neither party was arguing that the pleadings did not permit the Court to rule on all matters raised in their briefs, particularly Mr. Khan's unpled claim for moral damages and damages for moving costs, and URSU's unpled defence of (additional) recently acquired cause. Further, the parties agreed that the issue of costs should be reserved and addressed following delivery of these reasons.

[5] The evidence relied upon for the purposes of the application consists of:

a) Affidavit of Haris Khan, sworn April 23, 2025 [First Khan Affidavit];

b) Affidavit of Aoun Muhammad, sworn August 21, 2025 [First Muhammad Affidavit];

c) Affidavit of Haris Khan, sworn August 25, 2025 [Second Khan Affidavit];

d) Affidavit of Aoun Muhammad, sworn February 17, 2026 [Second Muhammad Affidavit];

e) Affidavit of Haris Khan, sworn March 6, 2026 [Third Khan Affidavit];

f) Transcript of the cross-examination of Haris Khan, conducted April 8, 2026 [Khan Cross-Examination];

g) Transcript of the cross-examination of Aoun Muhammad, conducted April 8, 2026 [Muhammad Cross-Examination]; and

h) Affidavit of Aoun Muhammad, sworn April 20, 2026 [Third Muhammad Affidavit].

[6] Aoun Muhammad is URSU's current General Manager [GM], having occupied this role since March 2024, and having otherwise been employed by URSU since April 2021. URSU is currently in the process of liquidation.

[7] For the reasons that follow, I am granting summary judgment in favour of Mr. Khan.

II. BACKGROUND

[8] The following sets out the general background to the parties' dispute. I will discuss my findings of fact further in the "Analysis" section of these reasons.

[9] Mr. Khan is an alumnus of the University of Regina [U of R] who became involved with URSU while a student. Mr. Khan served on URSU's Board of Directors [Board] from 2016 to 2018, initially as URSU's elected Vice-President, and subsequently as its elected President. It is URSU's practice to offer the Vice-President and President paid full-time employment as an officer of URSU, and this occurred with respect to Mr. Khan.

[10] Following Mr. Khan's graduation from U of R, he was hired as one of two Board Chairpersons for the Board. This was a casual paid position. The Board Chairperson is not a voting member of the Board. Rather, the Board Chairperson facilitates Board meetings.

[11] Mr. Khan served as a Board Chairperson from September 2021 to February 2023. During this period, he took training through Harvard Business School

Online [HBSO] that was paid by URSU. The former GM of URSU, Talha Akbar, authorized payment of this training through a URSU credit card. Mr. Khan's training through HBSO commenced while he was a Board Chairperson, and it continued while he was thereafter employed as the Director of Programs and Public Relations [Director of PPR]. This was a full-time permanent out-of-scope position.

[12] Mr. Khan was employed as the Director of PPR from on or about March 20, 2023, until his dismissal by URSU on or about February 22, 2024. His employment was governed by a two-page letter sent by Mr. Akbar [Employment Contract]: First Khan Affidavit at Exhibit "A". The Employment Contract contained various provisions, one of which is particularly relevant to the matters in dispute:

> 5. Upon termination, you will receive 12 month's notice or severance.

[13] The Employment Contract was signed by Mr. Khan, Mr. Akbar, and URSU's Vice President of Operations and Finance, Pedram Monfared. It is undisputed that paragraph 5 of the Employment Contract [Dismissal Provision] was used in the contracts of other out-of-scope employees who were employed by URSU, though there was eventually a shift away from including such a provision.

[14] When Mr. Khan began his employment as Director of PPR in March 2023, URSU had a formal work from home policy [WFH Policy] that began because of the Covid-19 pandemic. However, the Board decided to rescind the WFH Policy, and it was rescinded effective November 1, 2023. Mr. Akbar sent an email to all employees on November 20, 2023, reminding them that the WFH Policy had been rescinded. This email stated:

> Hello all,
>
> A reminder that as of Nov.1 the Remote Work Policy has been formally repealed. If you are not in the office, you should be taking PTO, EDO or other time off as approved.

> Please ensure you are adhering to this.
>
> [Second Muhammad Affidavit at Exhibit "F"]

[15] In combination with the return of all URSU employees to in-office work, who included a significant number of in-scope employees, URSU implemented a biometrics sign-in/sign-out system for its employees. All employees, including out-of-scope employees, were required to enroll in the biometrics system. That said, the signing in and out by out-of-scope employees was not strictly enforced.

[16] After the WFH Policy was rescinded, there remained an informal arrangement whereby out-of-scope employees could work from home, on occasion, if approved by their supervisors.

[17] On or about November 29, 2023, Mr. Akbar had a conversation with Mr. Khan about the biometrics system. During this conversation, Mr. Akbar advised Mr. Khan to make his best efforts to use the biometrics system.

[18] On Monday, February 12, 2024, Mr. Akbar was dismissed as URSU's GM. URSU's President, Tejas Patel, stepped in as an acting GM.

[19] On February 13, 2024, in response to a request for a meeting, Mr. Khan advised Oghenerukevwe Erifeta, a Vice President on URSU's Board, that he was not feeling well and was working from home. Ms. Erifeta acknowledged this, and Mr. Khan and Ms. Erifeta had a virtual meeting. There is no suggestion that this meeting had any connotation of discipline or performance issues being raised.

[20] On Thursday, February 15, 2024, Mr. Khan sent an email to President and acting GM Patel, requesting to work from home during the next week, which was U of R's reading week. In it, he stated:

> Hello President,

> I plan to work from home for the reading week since most staff is away. Let me know if you have any concerns or need anything during the week. Enjoy your reading week!
>
> Thanks.
>
> [First Khan Affidavit at Exhibit "F"]

[21] Monday, February 19, 2024, was a statutory holiday.

[22] On Tuesday, February 20, 2024, Mr. Patel responded to Mr. Khan, stating:

> Hello Haris,
>
> Thank you for reaching out and expressing your intention to work from home during the reading week. I will talk to the exec and will let you know.
>
> [Third Khan Affidavit at Exhibit "F"]

[23] That same day, a meeting of URSU's executive was held [Executive Meeting]. At the Executive Meeting, Mr. Patel indicated that he was opposed to granting Mr. Khan the ability to work from home that week, and instead, he recommended terminating Mr. Khan's employment, subject to obtaining legal advice. The Executive Meeting minutes indicate an action item as Mr. Patel "to seek legal advice on terminating Haris' contract".

[24] On February 22, 2024, a termination letter authored by Mr. Patel was emailed to Mr. Khan [Termination Letter]. The Termination Letter gave the following explanation for Mr. Khan's dismissal:

> This letter confirms that URSU has made the decision to terminate your employment, for cause, effective today. You are relieved of your job responsibilities effective immediately. Your employment is being terminated for cause based upon your absenteeism and breaches of URSU's Standard Operational Procedures and Expectations. Prior to offering you an employment position with URSU, you were specifically advised

> of the importance of and expectations of your attendance, availability, and executing your employment responsibilities in a diligent and professional manner.
>
> Your unexcused absences have come to URSU's attention and following an investigation, there is no evidence whatsoever to substantiate your absenteeism. Your absenteeism, along with your conduct of not formally requesting URSU for vacation or leave and not communicating in any manner with URSU prior to or during your absence, left the URSU team unaware of your whereabouts and status during a critical transitionary period that the URSU was going through. During the second week of February 2024, it was noted that you were absent from the office without any prior notification to your colleagues or management (13, 15 and 16 February 2024). This period coincided with a crucial transition within URSU, following Talha Akbar's departure and President Tejas Patel assuming the role of acting head of the organization. As a senior manager, it was incumbent upon you to inform the President/execs of your unavailability, whether you were working from home, taking leave, or otherwise indisposed. Our records, including a thorough review of ADP, show no evidence of vacation or leave requests filed for this period. Additionally, there was a complete lack of communication from your side, leaving the team without any knowledge of your whereabouts or status.
>
> Further, your unexcused absenteeism constitutes time theft as you were remunerated for your salary whilst you were absent. Your conduct has fundamentally and irrevocably breached URSU's trust in you as an employee, and constitutes serious misconduct.
>
> …
>
> [First Khan Affidavit at Exhibit "B"]

[25] At approximately the same time as Mr. Khan's employment was terminated, URSU terminated five or six other out-of-scope employees, in addition to laying off some in-scope employees: Muhammad Cross-Examination at p.14.

[26] Mr. Muhammad was out of the country from approximately December 16, 2023, until approximately February 16, 2024. He became URSU's GM on an

interim basis in March 2024, and he has since taken on the role on a permanent full-time basis.

[27] Mr. Khan filed a complaint against URSU under Part II of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 [*SEA*]. An employment standards officer concluded that URSU did not have cause to terminate Mr. Khan's employment, and that he was entitled to two weeks' severance pursuant to s. 2-60 of the *SEA*. URSU paid this amount and did not exercise its right to appeal the employment standards officer's determination to an adjudicator. While it may have been open to Mr. Khan to argue issue estoppel with respect to the issue of cause (see *Desmarais v Eat Your Cake Personal Health Delivery Inc.*, 2022 BCSC 1566), he has not made this argument.

[28] Mr. Khan received employment insurance benefits following his dismissal from URSU. He obtained employment with the Government of Saskatchewan in July 2024 that was more lucrative than his employment with URSU. In January 2025, Mr. Khan chose to move to Houston, Texas, to obtain a different position, in his preferred field, which is also more lucrative than his employment at URSU.

III. ISSUES

[29] Mr. Khan's application requires answers to some or all of the following questions:

A. Are the matters in issue suitable for determination by summary judgment?

B. If the answer to question "A" is "yes", has URSU established that it had just cause to dismiss Mr. Khan?

C. If the answer to question "B" is "no", what damages is Mr. Khan entitled to?

D. What costs should be awarded?

[30] My analysis and conclusions follow.

IV. ANALYSIS

A. Employing the Summary Judgment Process is Appropriate

[31] URSU submitted that summary judgment may not be appropriate because credibility determinations may need to be made to resolve the parties' dispute, in spite of the parties having conducted cross-examinations of the deponents before a Court reporter. At the same time, however, URSU agreed that an additional Court date that had been reserved in case *viva voce* evidence needed to be heard by the Court could be vacated.

[32] Summary judgment can provide a proportionate, fair, and just adjudication of an action in appropriate circumstances. There will be no genuine issue requiring a trial if the record permits the Court to confidently make findings of fact and apply the law to those facts, to fairly resolve the dispute. Rule 7-5(2)(b) of *The King's Bench Rules* permits the Court to weigh evidence, evaluate the credibility of a deponent, and draw reasonable inferences from the evidence, unless the Court determines that in the interests of justice such powers should only be exercised at trial. The considerations in determining whether to exercise the Court's powers pursuant to Rule 7-5(2)(b) are not closed, and include:

a) the complexity of the claim;

b) the amount at issue;

c) the importance of the issues;

d) the relative cost and speed of a summary judgment application, as

compared to trial;

e) whether better evidence will be available at trial than on the application, and the nature and extent of the conflict in the evidence, including:

i) whether there is competing evidence from multiple witnesses, the evaluation of which would benefit from cross-examination;

ii) whether credibility determinations are at the heart of the issues to be determined; and

iii) whether credibility determinations are made more difficult by the shortage of reliable documentary yardsticks.

f) whether the Court is able to fairly evaluate the evidence, including the extent to which it would assist the Court to have evidence presented by way of a trial narrative, to hear and observe witnesses and to have the assistance of counsel in reviewing the facts and the law within the conventional trial process;

g) whether summary judgment would resolve all claims against all parties, or whether a trial will be necessary in any event, raising, among other things, the possibility of duplicative proceedings or inconsistent findings of fact; and

h) whether the application could dispose of an important claim against a key party, thereby reducing cost and delay.

[33] The Court has the discretion to permit a party to present oral evidence pursuant to Rule 7-5(3) if it would allow the Court to reach a fair and just adjudication on the merits and is the proportionate course of action.

[34] Summary judgment may be appropriate for all, some, or no issues in dispute. If it is not appropriate for any issue(s), the Court may give directions under Rule 7-6 of *The King's Bench Rules* which shape the pre-trial and trial process to meet the needs of the case.

[35] The applicant for summary judgment has an evidentiary burden to establish that there is no genuine issue requiring a trial. If established, the burden shifts to the responding party to put evidence forward in support of a contrary conclusion: *Peter Ballantyne Cree Nation v Canada (Attorney General)*, 2016 SKCA 124 at paras 30-31. Both parties must put their best foot forward in terms of their evidence.

[36] In a summary judgment application, the Court may rely on an affidavit deposed on information and belief. However, it is open to the Court to draw an adverse inference if a party fails to adduce evidence from a person having personal knowledge of contested facts: Rule 7-3(3) of *The King's Bench Rules*.

[37] In this action, the parties have put significant affidavit evidence before the Court, and the deponents have been subjected to cross-examination. Neither party suggested that additional witnesses or evidence would be presented at a trial.

[38] Mr. Khan was dismissed without any notice. The fundamental issues for determination are whether URSU had just cause to dismiss Mr. Khan, and how to quantify damages in light of the Dismissal Provision in his Employment Contract. Determination of the second issue is necessary because Mr. Khan's position is that, even if there was just cause (which he vigorously denies), the Dismissal Provision may be interpreted as requiring payment of severance in such a circumstance.

[39] I am satisfied that the evidence permits me to reach a fair and just adjudication with respect to the aforementioned issues. I am able to make the required findings of fact, including through weighing evidence, evaluating deponents'

credibility, and drawing inferences, where appropriate. Summary judgment is the proportionate course of action for resolving the parties' dispute.

B. URSU has not Established that it had Just Cause to Dismiss Mr. Khan

[40] In a wrongful dismissal claim where no notice or pay in lieu of notice has been given, the onus is on the employer to prove just cause for dismissal on a balance of probabilities. Otherwise, the employer will be required to pay damages.

[41] In *Thomas v Saskatchewan Indian Gaming Authority Inc.*, 2021 SKCA 164 at para 21, the Court summarized the applicable law as follows:

> [21] The determination of whether an employee's alleged misconduct amounts to just cause for dismissal involves a contextual analysis with an eye to proportionality (*McKinley v BC Tel*, 2001 SCC 38, [2001] 2 SCR 161 [*McKinley*]; *Balzer v Federated Co-operatives Ltd.*, 2018 SKCA 93 at paras 19 and 50, [2019] 1 WWR 411; *Retail, Wholesale Department Store Union v Yorkton Cooperative Association*, 2017 SKCA 107 at paras 37 and 40). The question to be addressed is whether, in the circumstances, the behaviour of the employee was such that the employment relationship could no longer viably exist (*McKinley* at para 29). In *Dowling v Ontario (Workplace Safety and Insurance Board)* (2004), 246 DLR (4th) 65 (Ont CA), Gillese J.A. summarized the principles emerging from *McKinley* as follows:
>
> > [49] Following *McKinley*, it can be seen that the core question for determination is whether an employee has engaged in misconduct that is incompatible with the fundamental terms of the employment relationship. The rationale for the standard is that the sanction imposed for misconduct is to be proportional -- dismissal is warranted when the misconduct is sufficiently serious that it strikes at the heart of the employment relationship. This is a factual inquiry to be determined by a contextual examination of the nature and circumstances of the misconduct.
> >
> > [50] Application of the standard consists of:

> 1. determining the nature and extent of the misconduct;
>
> 2. considering the surrounding circumstances; and,
>
> 3. deciding whether dismissal is warranted (i.e. whether dismissal is a proportional response).

[42] The Court will obviously be keenly interested in the grounds for termination alleged at the time of the employee's dismissal. If an employer raises additional grounds which it was aware of at the time of the employee's dismissal, it is open to the employee to allege that the employer condoned the alleged misconduct.

[43] While there is no free-standing legal duty to consider all alternatives to termination before dismissing an employee, evidence this has occurred can aid in satisfying the Court that termination was a proportionate response: *Render v ThyssenKrupp Elevator (Canada) Limited*, 2022 ONCA 310 at para 65.

[44] When arguing just cause for dismissal, an employer must be prepared to explain why some form of progressive discipline short of termination would not be appropriate: *Barton v Rona Ontario Inc.*, 2012 ONSC 3809 at para 55.

[45] *Duxbury v Crook*, 2018 SKQB 353 at para 26 (varied on appeal, but not with respect to liability), illustrates that an employer has a significant onus to justify dismissing an employee without warning:

> [26] In summary, the onus rests on the defendant to establish just cause. He has not shown that he clearly outlined his expectations to Ms. Duxbury. Mr. Crook did not warn Ms. Duxbury that she had failed to meet expectations, nor did he give her time to meet those expectations. There was also no warning that she would be dismissed if she did not meet those expectations. It also cannot be said, based on the evidence, that Ms. Duxbury's conduct was grossly deficient to the extent that it would justify termination without warning. Based on all of the

> evidence before me, I find that there was no just cause for Ms. Duxbury's termination.

[46] In this case, the asserted grounds for Mr. Khan's dismissal have shifted over time.

[47] On February 22, 2024, in the Termination Letter, Mr. Khan was advised that he was being dismissed because he was absent from the office without prior notification on February 13, 15, and 16, 2024. This was described as a crucial transition period following Mr. Akbar's departure and Mr. Patel assuming the role of URSU's acting GM. Mr. Khan's absence from the office was also characterized as time theft, since Mr. Khan was paid in spite of his absence from the office. The Termination Letter explained that in light of the foregoing, Mr. Khan had fundamentally and irrevocably breached URSU's trust in him as an employee, which constituted serious misconduct justifying dismissal.

[48] By the time the Statement of Defence was filed on May 29, 2024, the grounds for termination had been amplified somewhat. These included that Mr. Khan had failed "to meet performance expectations as outlined in his employment contract", in addition to failing to adhere to URSU's policies with respect to remote work. The Statement of Defence pled that URSU had provided Mr. Khan with multiple warnings regarding his non-compliance with URSU's policies, and that his persistent failure to comply with URSU's remote work and return to office policies, despite numerous warnings, amounted to just cause to terminate Mr. Khan's employment.

[49] As of August 21, 2025, when URSU was responding to the summary judgment application, the First Muhammad Affidavit asserted more absences from the office than were alleged in the Termination Letter and the Statement of Defence. In particular, the First Muhammad Affidavit asserts at para. 4 that "The Plaintiff was absent from the office for ten consecutive days prior to his termination on February 22,

2024", and at para. 10 that "the Plaintiff was physically absent from work from February 12-22 without pre-approval or valid excuse."

[50] It is curious that somehow 18 months after the Termination Letter, Mr. Muhammad would have been in a better position to ascertain when Mr. Khan was absent from the office than those who prepared the Termination Letter, given it was prepared the week after Mr. Khan was alleged to have been absent from the office.

[51] I find the assertions in the First Muhammad Affidavit that Mr. Khan was absent from the office for 10 consecutive days prior to his dismissal to be unsubstantiated by the evidence. I accept the evidence of Mr. Khan that he worked in the office on February 12, 2024, and February 14, 2024. I rely on paras. 4-10 of the Second Khan Affidavit. Mr. Khan's evidence is consistent with when the Termination Letter alleged he was out of the office. Further, Exhibit "D" to the Second Khan Affidavit provides photographic evidence of Mr. Khan being in the office on February 14, 2024, while communicating with acting GM Patel.

[52] The summary judgment application was originally set to be heard on January 30, 2026. However, URSU was granted an adjournment so that it could file additional evidence. This resulted in the filing of the Second Muhammad Affidavit.

[53] Highlights of the Second Muhammad Affidavit include:

a) Exhibit "H": Executive Meeting minutes dated February 20, 2024, for the agenda item "Discussion Regarding Haris Khan's Performance", in which concerns are noted regarding absenteeism, including a previous complaint apparently made to Mr. Akbar in relation to which "no action was taken", apparent performance issues with "fail[ing] to follow up with sponsors", and Mr. Khan's recent request to Mr. Patel

to work from home, concluding with an action item for Mr. Patel "to seek legal advice on terminating Haris' contract".

b) Exhibit "I": An email from Mr. Patel to Mr. Akbar dated November 29, 2023, indicating that Mr. Patel received a formal complaint that Mr. Khan was not coming into the office for five days a week and that he wanted formal action taken, to which Mr. Akbar replied, "I'll meet with haris [*sic*]. We will institute biometrics for him going forward until this is clear".

c) Exhibits "J" and "K": Screenshots of Mr. Khan's timecards for periods during December 2023 and February 19 to 23, 2024, in which time is logged for periods in December 2023 but not for the period from February 19 to 23, 2024. I note February 19, 2024 was a statutory holiday and Mr. Khan was dismissed on February 22, 2024.

d) Exhibit "L": A screenshot of a text message conversation between Mr. Khan and Mr. Akbar on January 5, 2024, where Mr. Akbar asked Mr. Khan if he was "coming in today", and Mr. Khan replied that "On Fridays, I work from home.", to which Mr. Akbar replied "Ok".

e) Exhibit "N": An email dated January 18, 2024 in which Mr. Khan was seeking advice from a human resources consultant about an employee calling in sick at least two to three days per week, each week.

f) Exhibits "Q" and "R": Emails indicating that Mr. Khan did not follow the proper process when seeking a loan from URSU for the purchase of a computer (which was rectified).

g) Exhibit "T": Receipts from HBSO for Mr. Khan's enrolment in "Management Essentials", beginning October 19, 2022, "Power and

Influence for Positive Impact", beginning January 18, 2023, and "Leadership Principles", beginning July 26, 2023, which were sent to Mr. Akbar's attention, for amounts totaling $4,200 USD that were paid by URSU's credit card.

h) Exhibits "U" and "V": Documents indicating that URSU's accounting department was aware of the HBSO expenses being paid by URSU's credit card.

i) Exhibit "W": An email from Mr. Muhammad to Mr. Akbar in which Mr. Muhammad requested reimbursement for professional development that he had paid for, which was apparently reimbursed.

j) Exhibit "Y": Containing a copy of an offer of employment as the Board Chairperson, signed by Mr. Khan on September 3, 2021.

k) Exhibit "AA", "BB", and "CC": Copies of emails from HBSO to Mr. Akbar, dated September 20, 2022, November 2, 2022, and May 17, 2023, requesting payment for the HBSO courses being taken by Mr. Khan.

[54] The Second Muhammad Affidavit does not simply relate facts. It engages in advocacy and argument. For example, at para. 17, it states "The Plaintiff claimed he had a long-standing agreement where he would work from home on Fridays for purposes of prayer, but this was never documented and was only referenced in a text message once." At para. 25, it states "Despite the terms, the Plaintiff failed to meet the standards set out in the Marketing Management Contract by being absent for 9 consecutive workdays during the crucial transition period in February 2024, as referenced in Exhibit H." To be clear, Exhibit "H" contains the Executive Meeting minutes dated February 20, 2024. There is no reference in them to Mr. Khan being

absent for 9 consecutive workdays. Further, the Termination Letter only referred to absences from the office on February 13, 15, and 16, 2024.

[55] Yet another example of advocacy and argument is para. 34 of the Second Muhammad Affidavit, where it states "The Plaintiff's past misconduct with Student's Union funds in 2022 and 2023 would have resulted in immediate termination in any capacity and would have made him ineligible for the Marketing Manager Contract." It bears repeating that Mr. Muhammad did not become the interim GM of URSU until March 2024, after Mr. Khan's dismissal.

[56] The only evidence from URSU came from Mr. Muhammad, and he was cross-examined on his evidence.

[57] Highlights from the Muhammad Cross-Examination include:

a) Mr. Muhammad admitted he could not get into the mind of the Executive to know the reasons for Mr. Khan's termination, and he was not privy to what they discussed during their meeting (Muhammad Cross-Examination at p. 12);

b) Mr. Khan was dismissed during a restructuring period during which a significant number of other employees were also dismissed (Muhammad Cross-Examination at p. 14);

c) When questioned about his averment that Mr. Khan was absent from the office for 10 consecutive days being inconsistent with the 3 dates mentioned in the Termination Letter, Mr. Muhammad inexplicably said "I believe both are true at the same time" (Muhammad Cross-Examination at p. 23);

d) In spite of the rescinding of the WFH Policy, employees were allowed to work from home, on a case-by-case basis, if they had their manager's approval (Muhammad Cross-Examination at p. 46);

e) Mr. Khan was not the only URSU employee who had a severance provision of the type that was included in his Employment Contract (Muhammad Cross-Examination at p. 57);

f) Employees would not be expected to take PTO (paid time off) if working from home with their supervisor's approval (Muhammad Cross-Examination at pp. 67-68);

g) Mr. Muhammad, though he had not raised this in either of his affidavits, said that he was present in late November 2023 when Mr. Akbar told Mr. Khan he had to punch in and out of the office every day using the biometrics system, because of reported absenteeism (Muhammad Cross-Examination at p. 74);

h) Mr. Khan's employee file does not disclose Mr. Khan ever having been disciplined for anything (Muhammad Cross-Examination at p. 80);

i) Mr. Muhammad agreed that he kept records when he disciplined his staff (Muhammad Cross-Examination at p. 80);

j) Mr. Muhammad was not involved in the Executive Meeting on February 20, 2024, when a decision was made to dismiss Mr. Khan (Muhammad Cross-Examination at p. 87);

k) Mr. Muhammad was unaware whether anyone on the Executive attempted to contact Mr. Khan to discuss him not being in the office

at times during the previous week (Muhammad Cross-Examination at p. 103);

l) Mr. Muhammad was unaware of whether URSU's human resources consultant was contacted by the Executive prior to Mr. Khan's dismissal, and he found nothing to show that she was consulted (Muhammad Cross-Examination at pp. 114-115);

m) Mr. Muhammad was aware of a different URSU employee being disciplined "quite a few times" for "a lot of things", including "a few times for absenteeism" (Muhammad Cross-Examination at p. 116);

n) Mr. Muhammad believed that there may have been other reasons that Mr. Khan was dismissed, but "absenteeism is the one that actually… push[ed] it off the rock" (Muhammad Cross-Examination at p. 117);

o) Mr. Khan was respectful and nice to Mr. Muhammad (Muhammad Cross-Examination at p. 118);

p) Mr. Muhammad agreed that it was well within Mr. Akbar's authority to advise Mr. Khan that he could or could not work from home (Muhammad Cross-Examination at p. 122);

q) Mr. Muhammad said that, as GM of URSU, he would have a conversation with an employee who told him that he was going to work from home on a particular day (Muhammad Cross-Examination at p. 126);

r) Mr. Muhammad said he could not say for sure whether Mr. Akbar was okay with Mr. Khan working from home on Friday, January 5, 2024, when Mr. Khan advised Mr. Akbar that he worked from home on

Fridays and Mr. Akbar replied "ok" (Muhammad Cross-Examination at p. 127);

s) Mr. Muhammad agreed that Mr. Akbar approved Mr. Khan's attendance for professional development through HBSO (Muhammad Cross-Examination at p. 132);

t) Mr. Muhammad agreed that Mr. Khan was a URSU employee while he was employed as the Board Chairperson (Muhammad Cross-Examination at pp. 135-136);

u) Mr. Muhammad agreed that there was no written policy for approving professional development at URSU (Muhammad Cross-Examination at p. 139).

[58] The thrust of URSU's submissions, which are rooted in the evidence from Mr. Muhammad, is that the principal reason for Mr. Khan's dismissal was his being absent from the office without prior authorization, and secondarily, that he exhibited a pattern of disrespect during his employment. Alternatively, URSU claims after-acquired cause based on Mr. Khan's attendance for professional development through HBSO allegedly being in breach of a fiduciary duty owed to URSU as the Board Chairperson.

[59] I will proceed to review some of Mr. Khan's evidence, while keeping in mind that the onus is not on him to disprove just cause – it is on URSU to prove it, on a balance of probabilities.

[60] Mr. Khan's evidence is that he had a standing agreement with GM Akbar as of August 2023 that he would work from home on Fridays as a religious accommodation, and that this is reflected in his reminder to Mr. Akbar via text message on January 5, 2024, that he works from home on Fridays, to which Mr. Akbar replies

"ok": First Khan Affidavit at para. 16 and Exhibit "C". It is notable that Mr. Akbar's reply did not dispute Mr. Khan's assertion in any way.

[61] Mr. Khan's evidence is that he was never subjected to discipline while employed at URSU: Third Khan Affidavit at para. 22. He describes having a conversation with Mr. Akbar on or about November 29, 2023 about enrolling in the biometrics system, but states that the conversation was not disciplinary in nature. Rather, the conversation was about ensuring that Mr. Khan and all of his staff were enrolled in the system: Third Khan Affidavit at paras. 16-19. Mr. Khan's evidence about never being disciplined while employed by URSU is corroborated by no discipline being recorded in his employee file, and by the February 20, 2024 Executive Meeting minutes indicating "no action was taken" regarding concerns raised in November 2023 about Mr. Khan being absent from the office.

[62] I have previously indicated that I accept Mr. Khan's evidence that he worked in the office on February 12, 2024 and February 14, 2024: Second Khan Affidavit at paras. 4-10. This directly contradicts the evidence of Mr. Muhammad, who was apparently out-of-country until February 16, 2024, and which frankly begs the question of how Mr. Muhammad could give reliable evidence in this regard, in any event.

[63] I accept Mr. Khan's evidence, which was not challenged in cross-examination, that he was feeling unwell on February 13, 2024, and advised Vice President Erifeta Oghenerukevwe that he was working from home, to which she responded that a virtual meeting on that date would be perfect and that she hoped he got better soon: First Khan Affidavit at Exhibit "E".

[64] I accept Mr. Khan's evidence that he was working from home on February 13, 15 and 16, 2024, which was not challenged in cross-examination, and

which is evidenced by the communications attached as Exhibits “G” through “AA” of the First Khan Affidavit.

[65] I accept Mr. Khan’s evidence that during the afternoon of Thursday, February 15, 2024, he emailed acting GM Patel to advise of his intention to work from home the following week (U of R’s reading week), and requested that acting GM Patel advise him if he had any concerns with this: First Khan Affidavit at Exhibit “F”.

[66] I accept Mr. Khan’s evidence, which was not challenged on cross-examination, that at no material time was he advised of any performance or disciplinary issues that could lead to the termination of his employment: First Khan Affidavit at para. 9.

[67] The evidence is that acting GM Patel responded to Mr. Khan’s statement that he intended to work from home during the reading week by saying “Thank you for reaching out and expressing your intention to work from home during the reading week”, and “I will talk to the exec and will let you know”: Third Khan Affidavit at Exhibit “F”.

[68] The next communication Mr. Khan received was the Termination Letter.

[69] I accept Mr. Khan’s evidence that he relied upon Mr. Akbar’s approval for him to take professional development through HBSO. While some effort was made to attempt to have Mr. Khan agree in cross-examination that he was put in a conflict of interest as Board Chairperson by having professional development paid for by URSU, I do not see Mr. Khan as having been in any patent conflict of interest. There is no evidence that the Board was required to make decisions about which URSU employees’ professional development would be paid. Further, the Board Chairperson does not vote on any Board matters. Mr. Khan’s evidence, which I accept, is that he understood Mr. Akbar to have sought whatever authorization may have been required for him to attend

HBSO. I do not accept that the HBSO courses were unrelated to Mr. Khan's work as Board Chairperson, or as Director of PPR, or that he in some way unethically or illegitimately had URSU pay funds for the HBSO courses.

[70] Based on all the evidence, URSU has not satisfied me that it had just cause to terminate Mr. Khan's employment. I conclude that Mr. Khan was not subject to any discipline prior to his dismissal, and that he was given no warning that his conduct could result in the termination of his employment. It cannot be said, based on the evidence, that Mr. Khan's conduct was grossly deficient to the extent that it could justify termination without warning. I am not satisfied that lesser interventions, short of dismissal, would not have been a proportionate response given URSU's concerns regarding Mr. Khan's conduct. I am not satisfied that the behaviour of Mr. Khan was such that the employment relationship between him and URSU could no longer viably exist.

[71] Accordingly, I must assess damages.

C. Mr. Khan is Entitled to Damages Equivalent to 12 Months' Pay Based on the Dismissal Provision

[72] Mr. Khan's entitlement to damages depends on how the Dismissal Provision is interpreted. Mr. Khan submits that it entitles him to a severance payment equivalent to 12 months' pay. URSU submits that the Dismissal Provision contemplates Mr. Khan being provided with 12 months' notice prior to dismissal, or compensation based on a 12 month notice period, subject to mitigation.

[73] Mr. Khan's interpretation means that none of the amounts he earned in mitigation of his loss are deducted from a damages award, while URSU's interpretation means that all such amounts are deducted. This is significant because Mr. Khan obtained more lucrative employment by July 2024, less than five months following his

dismissal. He was also paid employment insurance benefits prior to then, and he has been paid two weeks' wages pursuant to the wage assessment under the *SEA*.

[74] A similar issue was present in *Tanel v Rose Beverages (1964) Ltd.*, 1987 CanLII 4882, 57 Sask R 214 (SKCA) [*Tanel*]. While Vancise J.A. was in dissent because he would have interpreted the parties' agreement differently than the trial judge, the legal effect of his interpretation was not disputed by the majority. Vancise J.A. stated at paras. 48-50:

> [48] Having concluded that the contract of employment contained a severance clause in the limited circumstances described, it is necessary to decide whether the duty to mitigate extends to a fixed amount of severance payment. This was not a question which was addressed by the trial judge. Where there has been a breach of contract, the amount of damage to be awarded is the amount which will put the injured party in the same position as if the contract had been performed. The duty to mitigate is based on the principle that if an employee earns income elsewhere because he is at liberty to do so, he has suffered that much less as a consequence of the breach. …
>
> [49] That situation differs from a contract of employment which carries with it an obligation to pay a fixed sum of money in the event of the happening of a certain event: An examination of the evidence of the appellant and Mr. Gill reveals that two situations were contemplated:
>
> > (a) termination of employment in limited circumstances; and
> >
> > (b) the determination of entitlement based upon legal principles if termination was for any other reason.
>
> [50] The parties agreed that the appellant would receive an agreed sum, one year's salary, if he was terminated for personal or political reasons. There was no corresponding agreement requiring the appellant to mitigate his loss in those circumstances. It was not an arrangement designed to give the appellant a reasonable period of time to find new employment which required him to mitigate his loss by reason of being at liberty to work during the notice period. It was an amount to be paid the appellant in the event that the employment relationship

> did not work out because of personal or political [incompatibility] problems. The obligation of the respondent to pay one year's salary existed whether or not the appellant obtained employment immediately after the termination of his contract. See *Cranch and Shostal v. Canada Permanent Trust Company* (1985), 36 Sask. R. 94 (Q.B.); and *Gannon et al v. Leaf Rapids Town Properties Ltd.*, [1979] 3 A.C.W.S. 29 (Man. Q.B.).
>
> [Emphasis added]

[75] Bayda C.J.S., who was in the majority, put it this way at paras. 4 and 24-25:

> [4] The distinction between what the appellant set out to prove and what the judge found he had proved is important. The distinction lies at the heart of the appeal. Had the appellant proved the existence of a term requiring an unconditional payment of a sum equivalent to one-year's salary, his remedy was an action not for damages for breach of contract, but for the recovery of a fixed sum of money becoming payable under a contract on the occurrence of an event. On the other hand, the existence of a term requiring one-year's notice of termination, as found by the judge, entitled the appellant to sue for damages for breach of contract, that is, for wrongful dismissal based upon the lack of a proper notice of termination. This latter remedy required the judge to assess the damages and in so doing to consider and make allowance for a mitigation of those damages. The practical result in the present case was that there was deducted from his *prima facie* damages of a year's salary the appellant's earnings from other employment during the year following his termination of employment. It is that deduction which brings the appellant to this Court.
>
> …
>
> [24] Hence, I answer the fundamental question posed at the outset – Should the trial judge's finding of fact respecting the existence of a term in the agreement providing for one-year's notice of termination be upheld by this Court? – in the affirmative. There is no need to consider the contingent question.

> [25] Accordingly, I would dismiss the appeal with costs.
>
> [Emphasis added]

[76] The legal principle in *Tanel* was acknowledged more recently in *Crook v Duxbury*, 2020 SKCA 43 at para 28 [*Crook*]:

> [28] In making this argument, the Appellants acknowledge that, where early termination of a fixed-term employment contract gives rise to a *debt* owing to a plaintiff (i.e., as would arise under a lump sum pay-in-lieu-of-notice clause or an early termination clause), mitigation is not appropriate because there are no *damages* (see, for example, *Tanel v Rose Beverages (1964) Ltd*. (1987), 57 Sask R 214 (CA) [*Tanel*]; *Mills v Alberta*, [1986] 5 WWR 567 (Alta CA); *Brown v Pronghorn Controls Ltd.*, 2011 ABCA 328 at paras 47-48, 515 AR 128; *Whitener v Royal Winnipeg Ballet*, [1999] 3 WWR 156 (Man CA); *Boutcher v Clearwater Seafoods Limited Partnership*, 2010 NSCA 12 at para 61, 288 NSR (2d) 177, leave to appeal to SCC ref'd, [2010] SCCA No 144 (QL); *Neilson* [*Neilson v Vancouver Hockey Club Ltd.*, 1988 CanLII 3051, 51 DLR (4th) 40 (BCCA)] at paras 5-6; and *Bowes* [*Bowes v Goss Power Products Ltd.*, 2012 ONCA 425] at para 61). …
>
> [Italics emphasis in original]
>
> [Underline emphasis added]

[77] While the Court made its comments in para. 28 above in the context of "a fixed-term employment contract" – because that was the type of contract in issue before it – the cases it cited for the proposition were not solely cases involving fixed-term contracts. *Tanel* did not involve a fixed-term contract: *Tanel* at paras 28-29.

[78] In *Crook*, the Court went on to state the following at para. 36:

> [36] To start, it is clear that when an employment contract stipulates an amount to be paid on termination and does not mention a duty to mitigate (i.e., where there is a contractual provision providing for pay in lieu or early termination), the amount is owed either as a contractual sum (i.e., a debt) or as liquidated damages. In such circumstances, the employer's obligation will not be affected by the employee's mitigation

efforts.

[Emphasis added]

[79] In *Mills v Alberta*, 1986 ABCA 162 at para 5 [*Mills*], one of the cases cited in *Crook*, the Court described the following provision:

> [5] …
>
> "7. This agreement may be terminated, with or without reason;
>
> (a) at any time by mutual consent in writing of the physician and the department.
>
> (b) by either party giving six (6) months notice in writing to the other, or by the department giving to the physician six (6) months salary in lieu of notice."

[80] The Court in *Mills* determined that para. 7(b) provided a contractual right to receive six months' salary in lieu of notice, without any requirement to mitigate:

> [11] Paragraph 7 substitutes six month's salary in lieu of notice for an employee's claim for damages for dismissal without notice. Six months without notice is a period which, depending upon the circumstances, may be more or less than an employee in the private sector might be awarded as damages for wrongful dismissal To avoid such litigation the contract provides for six month's notice or six months salary in lieu of notice. This is a contractual right to salary and not damages that the employee relies on when he is dismissed "with or without reason". As such it is not in my opinion subject to any duty on the part of the respondent to mitigate his loss. To hold otherwise would result in the Crown being involved in litigation to determine to what extent, if any, the employee failed to mitigate his loss when the purpose for such a provision was to avoid the potential for litigation every time the Crown exercised its right to terminate an employee's contract "with or without reason".
>
> [Emphasis added]

[81] In *Brown v Pronghorn Controls Ltd.*, 2011 ABCA 328 at paras 47-48

[*Brown*], also cited in *Crook*, the Alberta Court of Appeal stated:

> [47] By comparison, interpretation of a written employment contract involves first looking at what the contract entitles the employee to receive on termination. This process at this first stage is not concerned with mitigation. If the contract entitles the employee to payment of money, howsoever calculated, on termination, that right to that money is contractual. As such, the parties were not bound to specify an entitlement that is equal or even analogous to the quantum of reasonable notice that the common law might require if the contract was silent. If the contract entitles the employee to a sum of money "in lieu" of notice, it should, in our view, rarely be relevant whether the sum to which the employee is entitled is greater or less than the amount of notice that the common law might (in the view of some later court) give the employee.
>
> [48] Some employees may be able to negotiate a rich golden parachute on involuntary termination without cause which enormously exceeds what the common law might order by way of reasonable notice. It would not have much logic to say that such a clause 'mitigates' against the common law damages as such a clause replaces the common law right in the first place. The employer could not claim mitigation or failure to mitigate against that contracted for sum of money. The employer has not waived a damages response. The employer has made a covenant.
>
> [Emphasis added]

[82] In this case, recall that the Dismissal Provision states:

> 5. Upon termination, you will receive 12 month's notice or severance.

[83] Properly interpreting the Employment Contract and the Dismissal Provision requires following the Supreme Court's guidance in *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53 [*Sattva*]. The crux of *Sattva* is that contractual interpretation must be anchored in the words chosen by the parties. While surrounding circumstances are appropriately considered, they must never be allowed to overwhelm the words used: *Sattva* at para 57. Further, surrounding circumstances should consist only of "knowledge that was or reasonably ought to have been within the knowledge of

both parties at or before the date of contracting": *Sattva* at para 58.

[84] There is a general organizing principle of good faith that underlies many facets of contract law: *Bhasin v Hrynew*, 2014 SCC 71 at para 93 [*Bhasin*]. This includes contractual interpretation, and it involves the Court assuming that parties intend certain minimum standards of conduct in an agreement. Per *Bhasin* at para 45, the more unreasonable the result, the more unlikely it is that the parties can have intended it.

[85] Mr. Khan's evidence is that the Dismissal Provision was included in the Employment Contract because he was leaving an in-scope position with the Government of Saskatchewan for the out-of-scope position with URSU, and therefore he was giving up some job security that came with the in-scope position: Third Khan Affidavit at paras. 7-8.

[86] The evidence establishes that URSU has included such clauses in other employment contracts: Muhammad Cross-Examination at p. 57.

[87] The Dismissal Provision is similar to the provision described in *Mills*, which the Alberta Court of Appeal interpreted as providing a contractual right to salary where the employer decides to not give notice.

[88] URSU and Mr. Khan negotiated their rights via the Employment Contract and the Dismissal Provision. URSU covenanted that it would either give Mr. Khan 12 months' notice, or severance. The term "severance" is commonly understood to mean "pay in lieu of notice". I am satisfied that this is what the parties intended it to mean.

[89] I also conclude that "12 month's" was intended to qualify both the requisite notice period to avoid the payment of severance, and the quantum of severance if no notice was given. Interpreting "severance" as potentially being less than 12 months' pay in lieu of notice would be both inconsistent with the notice period and

render the amount of severance ambiguous, neither of which would have reasonably been within both parties' contemplation.

[90] URSU and Mr. Khan negotiated a "rich golden parachute" of the type described in *Brown* at para 48. URSU agreed to either provide Mr. Khan 12 months' notice of a pending dismissal, or 12 months' pay in lieu of such notice. Having chosen to give Mr. Khan no notice, URSU is bound by the obligation to make the requisite payment in lieu of notice.

[91] I have considered whether the Dismissal Provision should be interpreted as contemplating deduction of mitigated amounts from URSU's payment obligation. I have concluded that it should not. The Dismissal Provision makes no reference to such a deduction. Further, based on *Tanel* and *Crook*, it would be inappropriate to read such a requirement into the Dismissal Provision. Mr. Khan contracted to receive either 12 months' notice or 12 months' pay in lieu of notice. Per para. 36 of *Crook*, "[i]n such circumstances, the employer's obligation will not be affected by the employee's mitigation efforts."

[92] To the extent there may be any ambiguity with respect to the Dismissal Provision – which I do not find – I would interpret the ambiguity in favour of the Dismissal Provision not contemplating deduction of mitigated amounts from URSU's payment obligation, based on the doctrine of *contra preferentem*.

[93] While URSU may have made a bad bargain, it is stuck with it. When negotiating the Employment Contract, it was URSU that had the bargaining power, not Mr. Khan, and it was URSU that drafted the Employment Contract, not Mr. Khan.

[94] The result is that Mr. Khan is entitled to contractual compensation claimed pursuant to the Dismissal Provision.

[95] Mr. Khan's evidence is that his annual salary was $73,000: First Khan Affidavit at para. 10. He also avers that he received a 6% contribution to his Registered Retirement Savings Plan, which is valued at $4,380 per annum: First Khan Affidavit at para. 11.

[96] Mr. Khan avers to receiving a "health and dental package plan provided by URSU" (First Khan Affidavit at para. 11) but he has provided no evidence with respect to the value of this benefit, and I find the quantification of any damages associated with it unproven for the purposes of this action. While the value of the benefit is stated in para. 8 of the Statement of Claim, the facts contained in that paragraph are denied via para. 3 of the Statement of Defence.

[97] Mr. Khan has received two weeks' wages from URSU since his dismissal because of the wage assessment under the *SEA*. The exact amount of these wages, which is not identified in the evidence, will need to be deducted from the $77,380 ($73,000 + $4,380) that constitutes his proven remuneration for a 12-month period.

[98] I leave it to Mr. Khan to determine whether, as a result of this decision and any funds he receives from URSU, he will be required to pay back any employment insurance benefits he received.

D. Mr. Khan is Entitled to Moral Damages of $10,000

[99] Mr. Khan requests $5,000 in damages for costs incurred in relocating to Houston, Texas, moral damages of $35,000, and punitive damages in the amount of $25,000.

[100] I decline to award any damages for costs to relocate to Houston because these have not been proven, nor would I be able to conclude that the relocation was caused by Mr. Khan's wrongful dismissal. It appears he chose to leave his employment with the Government of Saskatchewan, which was in Regina, and which was more

lucrative than his employment with URSU, to pursue a different opportunity in Houston.

[101] Mr. Khan relies on the same conduct as supporting moral and punitive damages.

[102] Mr. Khan says that URSU's conduct caused him harm that extends beyond the normal distress associated with job loss. He submits that he was dismissed abruptly and without adequate explanation, and that the reasons given for his dismissal concealed the true reason, being because of restructuring. Mr. Khan points to Mr. Muhammad's submissions to the employment standards officer – such as Mr. Khan having the potential to make a career in tragedy fiction writing – as insulting and demeaning. He notes that Mr. Muhammad, when interviewed by the U of R's student newspaper, the Carillon, said that the five or six URSU employees fired during the period Mr. Khan was dismissed were all fired for cause, and that there were "really grave misconducts that we had to address": First Khan Affidavit at Exhibit "HH".

[103] Mr. Khan sought medical care for his mental health immediately following his dismissal. His physician described his mental health as being considerably impacted: First Khan Affidavit at Exhibit "FF".

[104] As previously mentioned, fortunately Mr. Khan was able to obtain employment with the Government of Saskatchewan in July 2024.

[105] The Court of Appeal recently addressed moral damages in *Saskatchewan Indian Gaming Authority Inc. v Pasap*, 2025 SKCA 15 [*Pasap*]. In *Pasap* at para 125, the majority confirmed that where the manner of dismissal causes mental distress beyond that ordinarily occurring with respect to job loss, moral damages can be awarded. The Court described the grounds for making an award of damages at paras. 126-127:

[126] While *Honda* [*Honda Canada Inc. v Keays*, 2008 SCC 39] clarified how moral damages may be awarded, the grounds for an award of moral damages remained the same as those previously awarded for *Wallace* [*Wallace v United Grain Growers Ltd.*, 1997 CanLII 332, [1997] 3 SCR 701 (SCC)] damages. These include, but are not limited to:

> (a) allegations of just cause not proven and not reasonably held, or where allegations included fraud, theft or serious misconduct and, with respect to the latter, when humiliation was caused to the employee;
>
> (b) misrepresentation as to the reason for a termination;
>
> (c) timing of a termination with the intention to deprive the employee of a benefit which would otherwise imminently vest (such as a bonus or a pension entitlement);
>
> (d) conduct by the employer which caused harm to the employee's reputation and therefore resulted in a longer period of unemployment;
>
> (e) failing to conduct a proper workplace investigation; and
>
> (f) failing to pay employment standards minimums.

See Natalie C. MacDonald, *Extraordinary Damages in Canadian Employment Law* (Toronto: Carswell, 2010) at 72-150.

[127] In *Coppola CA* [*Capital Pontiac Buick Cadillac GMC Ltd v Coppola*, 2013 SKCA 80], this Court also further explained when moral damages may be awarded in a wrongful dismissal claim:

> [27] In the employment context then, moral damages are available whenever the employer breaches the duty of good faith and fair dealing it owes to its employee in the dismissal of its employee (see *Wallace*, at para. 95). The duty requires employers to be "[c]andid, reasonable, honest, and forthright..." and further requires employers to "[r]efrain from engaging in conduct that is unfair or is in bad faith by being, for example, untruthful, misleading, or unduly insensitive" when dismissing an employee (*Wallace*, at para. 98). If an employer should

> run afoul of these requirements, moral damages will likely follow.
>
> (Footnotes omitted)

[106] Punitive damages involve different considerations. These are discussed in *Pasap* at paras 134-135:

> [134] Punitive damages are non-compensatory and are awarded when other types of damages are insufficient to achieve the objectives of punishment and deterrence. A judge must first determine compensatory damages, including moral damages, and then turn to the question of whether punitive damages are necessary because the total of the compensatory awards is not sufficient to achieve denunciation, deterrence and retribution: *Café La Foret* [*Café La Foret Ltd. v Cho*, 2023 BCCA 354]. While the purpose of an award of punitive damages is distinct from the purpose of moral damages, the same conduct which generates a moral damages award may also give rise to a punitive damages award: see, for example, *Fidler v Sun Life Assurance Co. of Canada*, 2004 BCCA 273, 239 DLR (4th) 547; *Plester v Wawanesa Mutual Insurance Company*, (2006), 269 DLR (4th) 624 (Ont CA), and its addendum (2006), 275 DLR (4th) 552 (Ont CA); and *Humphrey* [*Humphrey v Mene Inc.*, 2022 ONCA 531].
>
> [135] Punitive damages are to be imposed only if there has been high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour. When awarded, they should be assessed in an amount reasonably proportionate to the harm caused, the degree of the misconduct, the relative vulnerability of the plaintiff and any advantage or profit gained by the defendant: *Whiten v Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 SCR 595.

[107] Because punitive damages are only awardable where compensatory damages, including moral damages, are insufficient to achieve denunciation and deterrence, I will address Mr. Khan's claim for moral damages first.

[108] I am satisfied that Mr. Khan has established entitlement to moral damages.

[109] I accept that Mr. Khan suffered impacts on his mental health beyond those ordinarily attributable to job loss. Further, I conclude that URSU's conduct caused these impacts. This conduct included failing to conduct a reasonable investigation into URSU's apparent concerns with absenteeism, failing to pay the minimum pay-in-lieu of notice in accordance with the *SEA* (until ordered to do so), and making degrading remarks about Mr. Khan to the employment standards officer investigating Mr. Khan's complaint under the *SEA*. It also included alluding to the Carillon that "really grave misconducts" were the reason for Mr. Khan's dismissal.

[110] With respect to quantum, I take note of *Capital Pontiac Buick Cadillac GMC Ltd. v Coppola*, 2013 SKCA 80 at para 32 [*Coppola*]:

> [32] Although heavily driven by context, a quick canvass of the jurisprudence (albeit primarily from Ontario) indicates a range of $5,000 to $25,000, after extracting the outliers, where a court has awarded moral damages in the general context of an employer making unfounded allegations against an employee. As such, the instant award of $20,000 falls, again, near the upper end but nonetheless within the range of moral damages previously awarded in such circumstances.
>
> [Footnote omitted]

[111] One of the cases referred to in *Coppola* is *Benko v Scott*, 2007 SKQB 176 [*Benko*]. In *Benko*, letters defaming the plaintiff (accusing her of stealing from her former employer and being caught on camera) were sent to three individuals. Pritchard J. considered the seriousness of the defamatory statements to be "enormous" and found it amazing that the defendant sought to justify her statements even at trial: *Benko* at para 26. The plaintiff suffered embarrassment, mild depression, and loss of sleep: *Benko* at para 27. Pritchard J. awarded her $7,500 in damages. While the damages were awarded for defamation as opposed to moral damages in the context of a wrongful dismissal, *Benko* was referenced in *Coppola* as informing the range for moral damages in this province.

[112] In *Coppola*, $20,000 in moral damages were awarded by the trial judge. The defendant gave untruthful reasons for dismissing the plaintiff, which were followed by the very serious allegation that he had been dismissed for fraud, which was not supported by the evidence. The fraud allegation, which had been perpetuated to a potential business partner of the plaintiff, was maintained until examinations for discovery had taken place: *Coppola* at para 28.

[113] In *Pasap*, $25,000 in moral damages were awarded. The basis of the award was described as follows, at para. 131:

> 131 The trial judge found that SIGA [Saskatchewan Indian Gaming Authority Inc.] had engaged in bad faith conduct by misrepresenting the reason for Mr. Pasap's termination, and by failing to follow its own human resource policies, including but not limited to by failing to conduct a proper workplace investigation. Further, she found that SIGA wrongfully and continuously alleged that Mr. Pasap had engaged in fraud when the evidence did not support such an allegation. Given those findings, I see no error in the trial judge's decision to award moral damages of $25,000. The quantum of such an award is reasonably within the range of awards that have been granted in the 14 years between the issuance of *Honda* [*Honda Canada Inc. v Keays*, 2008 SCC 39] and the trial of this matter.

[114] Recognizing that fixing an amount for moral damages is more art than science, in my view an appropriate award for moral damages in this case is $10,000.

[115] This amount is within the range described in *Coppola*, but in the lower half of that range. I do not consider URSU's conduct to have approached the level described in *Coppola* or *Pasap*. Further, I infer that Mr. Khan's obtaining more lucrative employment relatively quickly after his dismissal tempered the mental harm he may have otherwise endured. In the result, I conclude that an amount near what was awarded in *Benko* is warranted. The *Benko* award, adjusted for inflation, would amount to approximately $11,300, today.

[116] The effect of my award will be that URSU will owe Mr. Khan 12 months of pay in lieu of notice, plus $10,000 for moral damages, when Mr. Khan was employed as the Director of PPR for less than one year. In addition, the award will be subject to pre-judgment interest: *Coppola* at para 44.

[117] In my view, the total amount of compensatory damages that will be awarded to Mr. Khan is sufficient to achieve the objectives of punishment and deterrence. URSU is not a profitable multi-national corporation that must be brought into line. It is an embattled students' union that is being liquidated. In the circumstances, there is no need to me to consider an award of punitive damages.

V. CONCLUSION

[118] I have concluded that pursuant to the Dismissal Provision Mr. Khan is entitled to damages equivalent to $77,380, less the amount he received pursuant to the wage assessment under the *SEA*.

[119] Further, Mr. Khan is entitled to moral damages of $10,000.

[120] Mr. Khan is entitled to pre-judgment interest on the above amounts pursuant to the provisions of *The Pre-judgment Interest Act*, SS 1984-85-86, c P-22.2.

[121] The parties have leave to make written submissions on costs. These must be served and filed within 21 days of this judgment. I do not anticipate requiring an oral hearing with respect to costs, but if either party considers an oral hearing to be necessary, they may request same in their written submissions.

[122] The parties should agree upon the quantum of damages payable to Mr. Khan in light of these reasons. If there is any disagreement, the parties have leave to make written submissions on the quantum of damages at the same time they make their written submissions on costs. Finally, if the parties are agreed upon the quantum of

damages payable in light of these reasons, it would be helpful if they could indicate the sum as part of their written submissions on costs.

J.
M.J. MORRIS