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Al Omari, 2026 CIRB 1260

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Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Saleem Labeeb Sulaiman Al Omari,

complainant,

and

Softtek Integration Inc.,

respondent.

Board File: 038065-C
Neutral Citation: 2026 CIRB **1260**
September 3, 2026

The panel of the Canada Industrial Relations Board (the Board) was composed of Mr. Simon-Pierre Paquette, External Adjudicator, appointed pursuant to section 12.001(1) of the *Canada Labour Code* (the *Code*), considered the preliminary issue of constitutional jurisdiction in the above-noted complaint. A hearing was held on February 12, 2026.

Appearances

Mr. Saleem Labeeb Sulaiman Al Omari, on his own behalf;
Mr. Andy Pushalik, for Softtek Integration Inc.

I. Nature of the Complaint

[1] On November 15, 2023, Mr. Saleem Labeeb Sulaiman Al Omari (the complainant) filed a complaint with the Labour Program of Employment and Social Development Canada (ESDC), pursuant to section 240(1) of Part III (Standard Hours, Wages, Vacations and Holidays) of the *Code*, alleging that he had been unjustly dismissed by Softtek Integration Inc. (Softtek or the respondent).

[2] The ESDC referred the unjust dismissal complaint to the Board on October 15, 2024, after the complainant requested adjudication.

[3] On October 17, 2024, the Board acknowledged receipt of the referral and requested written submissions from the parties.

[4] In its submissions, Softtek raised a preliminary objection that the Board lacked constitutional jurisdiction to adjudicate Mr. Al Omari's complaint on the basis that Softtek was not a federal work or undertaking. The complainant provided submissions in response to this preliminary objection.

[5] On November 19, 2025, the Board held a case management conference (CMC) with the parties. At the CMC, the parties agreed that this matter should be divided into two parts so the Board could first deal with the respondent's preliminary objection before turning to the merits if required. The Board noted at the CMC that the parties' written submissions to that point included statements that were difficult to reconcile regarding the nature of the work performed by the complainant and the respondent's operations. The Board consequently set a hearing on February 12, 2026, for the parties to provide evidence and legal arguments on the respondent's preliminary objection.

[6] This decision deals only with the preliminary matter of the Board's constitutional jurisdiction over the complaint.

II. Background and Facts

A. The Filing of the Respondent's Book of Documents

[7] By an email sent to the Board on February 8, 2026, the complainant objected to the filing of the respondent's book of documents.

[8] The respondent did file its materials with the Board and attempted to serve them on the complainant on the date directed by the Board. The respondent made 23 attempts to deliver the files to the complainant's email address over a span of 36 hours, after which it found an alternative method to successfully make the large files in question accessible to the complainant. Per the explanations provided by the respondent, which the complainant did not challenge, the complainant did not access those files until two days later, some four days before the hearing.

[9] The matter at hand is not so much one of late filing as it is one of technical issues impeding the respondent's attempts to serve copies of its materials on the complainant. While the complainant assumes that these issues were the respondent's fault, as opposed to being due to the free web-based email service he uses, he provided no evidence to that effect. In any event, the respondent acted quickly and in good faith to find a workable alternative and offered to consent to a continuance should this brief delay impede the complainant's ability to prepare for the hearing. The complainant did not accept this offer for a continuance, nor did he raise any substantive prejudice stemming from this situation. The fact that the complainant delayed accessing the files once they became available to him further militates against the premise that he suffered prejudice because of this situation.

[10] The complainant's objection is dismissed.

B. The Respondent's Evidence

[11] At the hearing, the respondent relied upon its previous filings with the Board and presented additional evidence from Mr. Fernando Jaramillo.

[12] Mr. Jaramillo has extensive experience with Softtek and currently works as the company's head of human resources based in Fort Lauderdale, Florida, United States.

[13] Per Mr. Jaramillo's evidence, Softtek is a global information technology (IT) outsourcing company headquartered in Dallas, Texas, United States. It provides IT services to its clients, such as infrastructure support and application development. Out of approximately 15,000 employees worldwide, Softtek has a small presence in Canada comprising some 16 employees distributed across British Columbia, Alberta, Ontario and Quebec. Mr. Jaramillo states that none of Softtek's clients are in the aviation, banking, transportation, railway or broadcasting industries or are Canadian government Crown corporations.

[14] The complainant, Mr. Al Omari, worked for Softtek as an end-user support technician from August 8, 2022, to September 1, 2023, when his employment was terminated due to the elimination of his position.

[15] Mr. Jaramillo testified that the complainant was assigned to service Softtek client Livingston International Inc. (Livingston), which outsourced an array of IT infrastructure services, including end-user support services, to Softtek. End-user support services are commonly known as an IT help desk and, as Mr. Jaramillo pragmatically put it, these are the people you call when you cannot access your shared drive or need a new laptop. An IT issue raised by a user to the help desk is called a "ticket." Mr. Jaramillo's description of Softtek's contractual relationship with Livingston was supported by a detailed internal document outlining its terms.

[16] As an end-user support technician, the complainant's primary responsibility was to respond to tickets created by Livingston employees and resolve the underlying problems experienced by users. This required that the complainant have access to Livingston property and to its IT network.

[17] Mr. Jaramillo confirmed that the complainant worked on Softtek's Livingston account for the entirety of his brief employment with Softtek. That said, generally speaking, Softtek can and does reassign employees such as the complainant from one client account to another depending on its operational needs.

[18] Mr. Jaramillo's evidence was that Softtek retained responsibility for all essential aspects of its employment relationship with Mr. Al Omari. This included paying the complainant's wages, providing his employment benefits package, conducting performance evaluations, assessing discipline if required and administering leave and vacation entitlements.

[19] Softtek's contractual arrangements with clients like Livingston are governed by service level agreements. Livingston did not exercise control over any aspects of the complainant's employment, and Softtek did not require its client's consent to take employment action regarding its own employees.

[20] On the issue of jurisdiction, Mr. Jaramillo testified that Softtek applies provincial labour standards legislation in Canadian provinces where it has employees and that he was unaware of any decisions in which Softtek had been found to be subject to federal jurisdiction.

[21] Turning to Softtek's client Livingston, Mr. Jaramillo described it as a large corporation assisting clients with customs-related matters associated with shipping goods while not engaging in actual shipping operations itself. He testified that, to his knowledge and based on his interactions

with Livingston as part of his job responsibilities, Livingston's operations fell under provincial jurisdiction. In support of this belief, the respondent provided a copy of a statement of claim filed in Ontario courts involving parties unrelated to the instant case and based on the application of provincial labour standards legislation in multiple Canadian provinces. Mr. Jaramillo also referenced a 2000 decision by the Ontario Labour Relations Board and a 2023 decision by the Quebec Superior Court, on judicial review of a decision of the Tribunal administratif du Québec, which referred to Livingston as a provincially regulated undertaking. Per Mr. Jaramillo, these were the only decisions Softtek was able to identify on the issue of Livingston being provincially or federally regulated.

[22] On cross-examination by Mr. Al Omari, Mr. Jaramillo acknowledged that, as head of Softtek's human resources group, he did not personally supervise the complainant's day-to-day activities and had no direct observation of his work and no knowledge of the specific IT systems on which the complainant provided assistance as an end-user support technician.

C. The Complainant's Evidence

[23] The Board notes at the outset that the complainant provided a comprehensive witness statement and book of documents in support of his testimony, some of which addressed uncontentious topics such as his assignment to Livingston and the nature of his job responsibilities. The Board appreciates the parties' collaborative efforts during the hearing to avoid duplicative or redundant evidence wherever possible. Of note, "Part II" of the complainant's witness statement and book of documents also concerned the substance of his unjust dismissal complaint against Softtek; the complainant agreed that these documents are not relevant to the instant matter of adjudicating the respondent's preliminary objection regarding the Board's jurisdiction.

[24] Like the respondent, the complainant relied on his prior filings with the Board. He testified on his own behalf.

[25] Mr. Al Omari confirmed having worked as an end-user support technician at Softtek and being assigned to provide support services to Softtek's client Livingston.

[26] His duties consisted primarily of responding to user tickets created by Livingston employees, which dealt with IT issues such as problems with printers, accessing accounts or shared drives and other similar problems inherent to modern computerized networks. In the complainant's view, although he was employed by Softtek, his day-to-day functions directly supported Livingston's operations on Livingston's property and using Livingston's IT systems. He therefore considered himself an integral part of Livingston's operations.

[27] The complainant testified that his responsibilities extended beyond provincial and international boundaries, including working with Softtek employees and Livingston employees located in other provinces and, at times, outside Canada. To that effect, he provided documentary evidence of IT equipment such as laptops being shipped internationally to Livingston users and excerpts of text messages detailing IT issues, such as helping users install printers, access applications or gain access to their accounts, in various locations.

[28] Mr. Al Omari maintained that these elements together demonstrate a substantial connection between his work and interprovincial and international shipping. The complainant believes that, without his support, Livingston could have found itself unable to function, disrupting its operations and affecting cross-border shipments by its clients.

[29] The complainant filed into evidence links to articles discussing Livingston's activities. Those articles are from Livingston's own corporate website, Wikipedia and the website of a third-party company called Unisco. These articles, the complainant opined, confirmed Livingston's involvement in the international shipping industry.

[30] The complainant expressed the view that Livingston should be considered federally regulated, asserting his opinion that documentation to the contrary suggesting provincial regulation was incorrect.

[31] He also testified to having been verbally told by an official from Quebec's Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) that the proper way to challenge his dismissal was through federal labour standards legislation. The complainant did not provide substantive particulars on this point, but in his view, this reinforced the legitimacy of his position.

[32] On cross-examination by Softtek's counsel, Mr. Al Omari acknowledged that he remained at all times an employee of Softtek and that his role consisted of assisting Livingston employees with IT-related issues as assigned.

III. Positions of the Parties

[33] The respondent argues that its operations are not federally regulated and that the Board therefore lacks jurisdiction to hear Mr. Al Omari's complaint.

[34] The respondent adds that it is a well-established principle that an undertaking is deemed provincially regulated by default and shall only be considered to fall within Canada's federal jurisdiction if the facts support such a finding.

[35] The respondent argues that it is an IT outsourcing company whose operations fall wholly within the scope of provincial constitutional authority. While it may have operations in many jurisdictions, this does not alter the basic nature of its operations, which do not fit within any of the federally regulated areas listed in section 2 of the *Code*.

[36] The respondent disagrees with the complainant's argument that its client that he serviced, Livingston, is federally regulated. The respondent further argues that it and its client are not commonly owned or operated in any way and that their operations are not integrated.

[37] For his part, the complainant submits that the nature of his duties, which involved activities extending beyond provincial boundaries, brings his employment within federal jurisdiction. He argues that many of the tasks he performed, including configuring and resolving network-related issues and providing support for hardware and software connected across jurisdictions, were inherently interprovincial or international in scope.

[38] The complainant also argues that his job was federally regulated by virtue of being highly integrated with Softtek's client Livingston. From the complainant's perspective, Livingston is itself a federally regulated undertaking owing to its activities in the transportation and logistics industry. The complainant's position is best summarized in his witness statement:

> Although I was formally employed by Softtek, my work was functionally integrated into Livingston International's federally regulated operations. My duties formed part of the continuous operation of interprovincial and international trade and communications infrastructure.

> My role was not local or provincial in nature. The users, systems, and operational impact of my work extended beyond provincial boundaries on a daily basis.
>
> I understand that under Canadian labour law, jurisdiction is determined by the nature of the work actually performed and its integration into a federal undertaking, not solely by the corporate classification of the employer. My work met that test.

[39] The complainant notably relies on precedents from the Supreme Court of Canada (SCC) in support of his arguments.

IV. Analysis and Decision

A. Legal Principles Related to Constitutional Jurisdiction

[40] Per section 241.2(1)(a)(i) of the *Code*, the Board may reject an unjust dismissal complaint that is referred to it if it is satisfied that the complaint does not fall within its jurisdiction.

[41] The unjust dismissal provisions of the *Code* are found in Division XIV (Unjust Dismissal) of Part III of the *Code*. Section 167(1) stipulates that Part III applies to employees who are employed in or in connection with any federal work, undertaking or business. Therefore, the complainant's employer must be a federal work, undertaking or business for the Board to have jurisdiction to hear and decide his unjust dismissal complaint.

[42] Such federal undertakings are defined by section 2 of the *Code*:

> **2** In this Act,
>
> …
>
> ***federal work, undertaking or business*** means any work, undertaking or business that is within the legislative authority of Parliament, including, without restricting the generality of the foregoing,
>
> > **(a)** a work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada,
> >
> > **(b)** a railway, canal, telegraph or other work or undertaking connecting any province with any other province, or extending beyond the limits of a province,
> >
> > **(c)** a line of ships connecting a province with any other province, or extending beyond the limits of a province,

> **(d)** a ferry between any province and any other province or between any province and any country other than Canada,
>
> **(e)** aerodromes, aircraft or a line of air transportation,
>
> **(f)** a radio broadcasting station,
>
> **(g)** a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act*,
>
> **(h)** a work or undertaking that, although wholly situated within a province, is before or after its execution declared by Parliament to be for the general advantage of Canada or for the advantage of two or more of the provinces,
>
> **(i)** a work, undertaking or business outside the exclusive legislative authority of the legislatures of the provinces, and
>
> **(j)** a work, undertaking or activity in respect of which federal laws within the meaning of section 2 of the *Oceans Act* apply pursuant to section 20 of that Act and any regulations made pursuant to paragraph 26(1)(k) of that Act; …

[43] Employment and labour relations are presumptively matters subject to provincial jurisdiction and fall under the property and civil rights provisions of section 92(13) of the *Constitution Act, 1867*. This presumption may be rebutted, with federal jurisdiction being an exception, and the burden of proof rests with the party that makes the claim (see *Tessier Ltée* v. *Quebec (Commission de la santé et de la sécurité du travail)*, 2012 SCC 23 (*Tessier*)).

[44] A work, undertaking or business may fall under federal labour jurisdiction if its essential operational nature brings it within a federal head of power (direct jurisdiction) or if its essential operational nature renders the work integral to a federal undertaking (derivative jurisdiction).

[45] In *Tessier*, the SCC noted that the test to determine derivative jurisdiction must focus on the relationship between the activity, the employees under scrutiny and the federal operation that is said to benefit from the work of those employees. There is derivative jurisdiction when the work relates to an activity that is vital, essential or integral to a federal undertaking.

[46] In performing this analysis, the Board must consider the relationship from the perspectives of the undertaking at issue and the core federal undertaking, “assessing the extent to which the effective performance of the federal undertaking was dependent on the services provided by the

related operation, and how important those services were to the related work itself" (*Tessier*, paragraph 46).

[47] In both direct and derivative jurisdiction, determining which level of government has labour relations authority requires assessing the undertaking's essential operational nature (see *Tessier*, at paragraph 18). This analysis is called the functional test and is focused on the normal and habitual activities of the entity as "a going concern," without regard for exceptional or casual aspects (see *Northern Telecom* v. *Communications Workers*, [1980] 1 S.C.R. 115, at page 132). If the functional test clearly reveals that labour relations fall under either federal or provincial jurisdiction, no further analysis is needed.

[48] If the functional test is inconclusive, the second step of the analysis involves examining whether the provincial regulation of the entity's labour relations would impair the core of a federal head of power. This second step has been identified as the impairment test (see *NIL/TU,O Child and Family Services Society* v. *B.C. Government and Service Employees' Union*, 2010 SCC 45 (*NIL/TU,O*)).

[49] To analyze whether it has jurisdiction in this matter, the Board will first consider direct jurisdiction and examine the essential nature of the undertaking itself to determine whether it is a federal undertaking. If the Board is unable to conclude that there is direct federal jurisdiction, it will then consider whether there is derivative federal jurisdiction by analyzing whether the entity's activities are vital, essential or integral to a federal undertaking.

B. Application to the Facts

[50] For the reasons set out below, the Board finds that Softtek is subject to provincial jurisdiction and consequently that the Board does not have jurisdiction in the instant matter.

1. Direct Jurisdiction

[51] At the outset, the Board rejects the complainant's argument based on an opinion allegedly offered by a CNESST employee that Softtek is federally regulated. Even if evidence on the substantive particulars of that conversation had been adduced, the views expressed by a CNESST employee would not bind the Board in making its determinations under the *Code*.

[52] As mentioned above, the first step in the functional inquiry involves determining the entity whose activities are to be considered. The parties do not dispute that the entity to be analyzed for the purposes of the constitutional assessment is Softtek.

[53] The evidence demonstrates that Softtek is an IT service company. That line of work places Softtek resolutely under presumptive provincial jurisdiction.

[54] The Board finds that the complainant's evidence did not establish that Softtek's normal and habitual activities can be characterized as falling directly within any of the federal heads of power listed in section 2 of the *Code*. Rather, the principal ground for the complainant's argument that Softtek is directly subject to federal jurisdiction appears to be the premise that his responsibilities at Softtek entailed communicating with others across provincial and international boundaries, as well as sometimes having IT equipment like computers and printers shipped to users across those same boundaries.

[55] The Board rejects that argument.

[56] The complainant's position appears to be based on two erroneous propositions: firstly, that the constitutional analysis set out in *NIL/TU,O* must be carried out with regard to the responsibilities of an individual employee rather than the normal and habitual activities of the undertaking itself, and secondly, that cross-border interactions within an otherwise provincially regulated occupation are sufficient to make it subject to Parliament's labour relations authority.

[57] In the instant case, Softtek contracted with its client Livingston to run the latter's IT help desk, where the complainant worked as a Softtek employee. This necessarily entailed communication between employees of Softtek and employees of its client. With regard to shipping IT components between facilities, the complainant's own evidence reveals that this was performed by third-party service providers like the United Parcel Service and was incidental to Softtek's normal and habitual core business in the IT industry.

[58] The Board emphatically disagrees with the premise that conversations held in the ordinary course of business between individuals – be they colleagues or clients – located in different provinces or countries is sufficient to bring an undertaking under federal jurisdiction (see, for example, *Overstory Media Inc.*, 2024 CIRB 1138, in which the Board concluded that using

interprovincial communications in the ordinary course of business is not, by itself, sufficient to bring an undertaking under federal labour jurisdiction).

[59] The same can be said of transferring tools or equipment used in the ordinary course of business to or from facilities located in different provinces or countries, particularly if this is done using third-party shippers. In *Consolidated Fastfrate Inc.* v. *Western Canada Council of Teamsters*, 2009 SCC 53, the SCC confirmed that a mere contractual relationship with an interprovincial carrier does not, in itself, transform a business into a federal undertaking.

[60] In short, delivery methods or communication tools used in the ordinary course of business do not change the essential nature of a business's operations, and providing services to, or contracting with, federally regulated entities is not sufficient on its own to attract federal jurisdiction.

[61] Notwithstanding that the complainant's argument is inconsistent with longstanding jurisprudence, placing the bar for federal jurisdiction so low in a modern, globalized business environment would entail there would hardly be any provincially regulated businesses at all.

[62] As the complainant has failed to provide evidence that Softtek's normal and habitual activities fall within federal jurisdiction through direct jurisdiction, the Board finds that Softtek is not in itself a federal work, undertaking or business.

2. Derivative Jurisdiction

[63] The Board will now consider whether Softtek's operations are sufficiently integrated into a federal undertaking to bring it within derivative federal jurisdiction.

[64] The complainant also argues that Softtek's client Livingston is federally regulated and that the nature of his work operating Livingston's help desk as a Softtek employee was so vital, essential or integral to Livingston's ability to operate as to make his position at Softtek fall under federal jurisdiction.

[65] The Board rejects both facets of this argument.

[66] First, based on the evidence adduced in this case, the complainant failed to convince the Board that Livingston itself is federally regulated. Put simply, his conclusion to that effect is based

on his personal assessment that Livingston provides customs brokerage services and therefore engages in interprovincial and international shipping. To that end, the complainant relied on online articles about Livingston and on the existence of the federal *Customs Act*, which, in his view, suggest that customs brokerage must necessarily be a federally regulated industry.

[67] With respect, this is far from the level of evidence required for the Board to make such a finding.

[68] The complainant did not call any witnesses who worked directly for Livingston or had direct knowledge of its operations, nor did he petition the Board to have Livingston added as a party or given intervenor status. Contrary to the evidence of Mr. Jaramillo owing to his broad job responsibilities at the senior management level, the complainant's personal experience at Livingston in particular is of extremely limited probative value, as his work was limited to resolving help desk tickets.

[69] The complainant's abstract premise that the customs brokerage industry is obligatorily subject to federal jurisdiction over its labour relations also does not withstand scrutiny. In *G.M. Patry Ltd., Distripak Ltd., Lacolle Transport Ltée* (1982), 50 di 71 (CLRB no. 389), the Board's predecessor, the Canada Labour Relations Board, made clear that jurisdiction must be determined on the specific facts of each case and does not arise merely from participation in the customs brokerage industry (see also *Pacific Customs Brokers Ltd.* v. *Office and Technical Employees' Union*, 1980 CanLII 508 (BC SC)). In the absence of sufficient reliable evidence otherwise, the presumption of provincial jurisdiction applies.

[70] In any event, even if the Board were to accept the complainant's assertion that Livingston falls under federal jurisdiction for its labour relations, his claim that his work at Livingston was vital, essential or integral to that company's core operations is likewise fatally flawed.

[71] The complainant claims that without a staffed IT help desk, Livingston employees could find themselves unable to perform their jobs, such as being unable to access their computer accounts, which by extension would affect Livingston's ability to operate and to assist its clients in shipping their goods.

[72] This argument ignores the reality that any subcontracting agreement necessarily entails some level of cooperation between the corporate parties involved. It is also so overbroad as to be self-fulfilling; any service or position in any undertaking presumably exists because it fulfils a need that, if left unfulfilled or performed ineptly, could arguably affect operations in some way.

[73] The complainant did not present evidence establishing that the relationship between Softtek and Livingston was anything other than an arm's length, or independent, commercial relationship between service provider and client. Although the IT services rendered by Softtek are important to the good functioning of Livingston's operations, those services are merely in support of Livingston's core operations and do not meet the test of being vital, essential or integral.

[74] Moreover, constitutional jurisdiction is not determined through the identity of a business's clients, but rather the actual nature of its operational activities (see *NIL/TU,O*, at paragraph 39). Paraphrasing the Supreme Court, Livingston's reliance on its contractual agreement with Softtek does not detract from the latter's distinct character as an IT service provider. Even if one were to accept the complainant's assessment of Livingston's activities as a customs broker, the fact that Softtek serves such a client cannot take away from the essential character of its core business that is in all respects regulated by the provinces. Neither Livingston's alleged – albeit unproven to the Board's satisfaction – participation in international shipping nor Softtek's contractual mandate to provide services tailored to Livingston's specific needs displaces the operating presumption that labour relations are provincially regulated. To state the obvious, commercial services must, in order to be effective and successful, be geared to the target clientele; this is insufficient to oust the primary provincial jurisdiction over the provider's labour relations. The Board thus does not accept the complainant's arguments on derivative federal jurisdiction.

V. The Use of Generative Artificial Intelligence

[75] In response to the rise and growing use of generative artificial intelligence (AI), the Board has issued a policy entitled "Policy on the Use of Generative Artificial Intelligence by Parties." This policy became effective on November 1, 2025. It requires that parties pre-emptively disclose their use of AI in preparing their case and provides for various measures aimed at curbing the potential misuse of this technology.

[76] During closing arguments, the complainant presented a complex and multi-faceted legal position supported by references to existing legislation and case law from the Supreme Court of Canada. This said, the complainant's legal arguments consisted mainly of high-level references to those authorities, regarding which he had difficulty answering questions from the Board. The complainant eventually confirmed to the Board that he had used generative AI to craft his legal arguments and prepare his case.

[77] The Board's case law highlights rising concerns regarding the use of generative AI by parties (see *Humpherville*, 2026 CIRB 1250; *Pettitt*, 2025 CIRB LD 5745 (*Pettitt*); and *Choi*, 2024 CIRB 1146 (*Choi*)). Issues associated with using AI in the context of litigation typically concern the oft-cited problem termed "hallucinations," namely the tendency of AI to create or misstate facts, case law or legislation.

[78] The instant case brings up an issue of an altogether different nature. Here, with the assistance of generative AI, the complainant presented actual jurisprudence from the Supreme Court of Canada and Canadian legislation in support of a complex constitutional law argument. However, the legal principles he espoused, which became the lens through which he focused his evidence, bore little resemblance to the cases he relied upon except in the most generic sense. The complainant was unable to field substantive questions, such as citing specific excerpts from his own authorities, for want of understanding his arguments or source materials.

[79] The complainant should have pre-emptively disclosed his use of generative AI, and past cases quite properly emphasize that the fact that a party is not represented by counsel does not excuse them from their responsibilities before the Board (See *Pettitt*; and *Choi*). This said, for clarity, in this case the Board emphasizes that it does not question the complainant's good-faith belief in the correctness of the position he was advancing. Indeed, the Board was struck by his respectful and collegial approach during the hearing, as well as the structured way he presented his case.

[80] And therein lies the problem. The complainant was very poorly served by his reliance on AI, which led him to very ably present arguments rooted in a fundamental misunderstanding of applicable law that ultimately had no chance of success. The respondent was nevertheless

required to rebut the complainant's position and the Board was similarly required to devote time and resources which could have been allocated to other cases.

[81] Parties are reminded that, regardless of their marketing or the level of conviction they display in their interactions with users, generative AI systems remain software and are not licenced to practice law. They do not possess the judgment, experience, ability to strategize, analytical skill and ethical guardrails that lawyers provide and law societies oversee. Those resorting to generative AI in the context of litigation, and self-represented parties in particular, should be exceedingly mindful of the risks involved in equating AI's eloquence with legal competence, as well as of the possibility that the work product it generates could ultimately work against a party's own best interests. Individuals opting to base litigation on such tools do so at their own peril and are accountable for any consequences that may ensue to themselves and others.

VI. Conclusion

[82] Given the above, the Board finds that Softtek is not a federal undertaking.

The Board upholds the respondent's preliminary objection and, being without jurisdiction to adjudicate this matter, dismisses Mr. Al Omari's underlying complaint.

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Simon-Pierre Paquette
External Adjudicator