

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Chowne v. Timesing Education Group Inc.*,  
2025 BCSC 1196

Date: 20250626  
Docket: S237360  
Registry: Vancouver

Between:

**Daniel Godfrey Chowne**

Plaintiff

And

**Timesing Education Group Inc.**

Defendant

Before: The Honourable Justice Chan

## Reasons for Judgment

Counsel for the Plaintiff:

I. Jung

Counsel for the Defendant:

S.K. Kent  
M. Scekcic

Place and Date of Trial:

Vancouver, B.C.  
April 28–30, 2025  
May 1–2, 5–6, 9, 2025

Place and Date of Judgment:

Vancouver, B.C.  
June 26, 2025

**Table of Contents**

**INTRODUCTION ..... 3**

**FACTUAL BACKGROUND..... 3**

    The May 26, 2023 Meeting..... 5

    Emails of May 26 and 27, 2023 ..... 6

    Email of June 4, 2023..... 7

    Email of July 4, 2023 ..... 7

    Emails of July 6, 2023 ..... 7

    Full site school meeting July 12, 2023..... 9

    Meeting on July 14, 2023 ..... 9

    Text messages on July 21, 2023..... 10

    Text message on July 22, 2023..... 11

    The hiring of the new principal..... 11

    Events of August 2023 ..... 12

    The start of the school year September 2023..... 13

    Events after September 2023..... 16

**EVIDENCE ON THE COUNTERCLAIM ..... 16**

**ISSUES..... 20**

**CREDIBILITY AND RELIABILITY..... 20**

**WAS THE PLAINTIFF CONSTRUCTIVELY DISMISSED?..... 21**

    Legal Principles ..... 21

    Position of the Plaintiff ..... 22

    Position of the Defendant ..... 22

    Analysis..... 23

**THE DEFENDANT’S COUNTERCLAIM ..... 27**

    The Defendant’s Position ..... 27

    The Plaintiff’s Position ..... 28

    Analysis..... 28

**CONCLUSION..... 30**

**Introduction**

[1] The plaintiff Daniel Chowne was the principal of a private high school in Vancouver for approximately 10 years. He alleges he was constructively dismissed in 2023 when the school hired a new principal. He sues for damages for constructive dismissal and in the alternative, wrongful dismissal. The defendant employer, Timesing Education Group Inc. (“Timesing”), argues Mr. Chowne was not dismissed but that he chose to resign.

[2] Timesing alleges it suffered harm when Mr. Chowne resigned without adequate notice, as the school was not able to pass its scheduled inspection with the Ministry of Education and Child Care (the “Ministry”). Timesing counterclaims against Mr. Chowne for damages for his alleged failure to prepare an adequate report for the Ministry inspection. After the school failed this external evaluation by the Ministry in October 2023, it was required to correct a number of deficiencies in a short period of time to retain its accreditation. The school temporarily lost its certification when its accreditation was placed in conditional status.

**Factual Background**

[3] Mr. Chowne obtained his teaching certificate from the Ministry of Education in 1986. He is currently 72 years old.

[4] Pattison High School (“Pattison”) is located in downtown Vancouver. It is a private school owned by Timesing, with Amanda Lu as the owner and director. Pattison attracts foreign students to its grade 10 to 12 program.

[5] Mr. Chowne worked as an independent consultant in the role of principal in 2003 and 2004 to establish Pattison, while it was seeking its initial accreditation. Mr. Chowne stepped down from this role when Pattison officially opened in September 2004.

[6] In 2013, Pattison contacted Mr. Chowne to see if he was interested in the position of principal. Mr. Chowne accepted an offer of employment as principal in February 2013. He signed an offer of employment dated February 25, 2013. His duties

as principal included maintaining government accreditation, registration and compliance, and developing and implementing school policies and procedures.

[7] Mr. Chowne as principal and Ms. Lu as school director worked closely together. Their offices were side by side. Ms. Lu testified she respected Mr. Chowne professionally and they also had a personal relationship, socializing on occasion with their family members.

[8] Ms. Lu testified that around the time when Mr. Chowne was about to turn 67, she brought up the subject of retirement with him. In approximately 2019, she asked him if he had any plans to retire. He responded that he did not. Ms. Lu testified she wanted the school to be prepared, as the previous principal had retired at age 67. She told Mr. Chowne that retirement could be a process and he could switch to part-time work until he was ready to retire. Ms. Lu testified that Mr. Chowne was in general agreement with this proposal.

[9] Ms. Lu testified that starting in 2019, the school began receiving complaints about Mr. Chowne from students and staff. The complaints were about how Mr. Chowne managed student behaviour. These complaints alleged that Mr. Chowne was emotional and easy to anger. Ms. Lu testified that, while she had discussed the complaints with Mr. Chowne, she was concerned as these complaints were becoming a pattern. Ms. Lu was aware of some personal issues that Mr. Chowne shared with her in 2022.

[10] By the spring of 2023, Ms. Lu believed student management was no longer a good fit for Mr. Chowne. At the same time, Ms. Lu testified she had to step back from the school as she needed to spend more time with her elderly father in China after her mother passed away in 2021. Ms. Lu still valued Mr. Chowne's contributions and believed a solution was to have Mr. Chowne focus on accreditation issues and the development of an online school. Since 2020, Pattison had been pursuing an opportunity to open an online school in Ontario, with Ms. Lu, Mr. Chowne, another teacher, and an IT staff member working on that project. In Ms. Lu's view, assigning

Mr. Chowne responsibilities relating to accreditation and the online school played to his strengths and did not require student management.

**The May 26, 2023 Meeting**

[11] Ms. Lu sent an email on May 26, 2023 at 2:11 p.m. asking to meet at 3:30 p.m. or 3:45 p.m. that day. Mr. Chowne responded that he had a meeting with a prospective student at 4:00 p.m. Ms. Lu responded they could meet at 3:30 p.m. Due to traffic, Ms. Lu could not get to the school by 3:30 p.m. They met after Mr. Chowne's other meeting.

[12] Mr. Chowne did not know the reason for the meeting. He went to her office at about 4:15 p.m. He testified they were seated at a table, and Ms. Lu had a pad of paper. Ms. Lu asked him what was on his mind. He referenced a teacher that was coming to school late. He testified that Ms. Lu then advised him the school was going to replace him as principal starting in September 2023. Mr. Chowne testified he was in shock when he heard this and was speechless. He testified he stood up and walked away from the table. His evidence is no alternate positions were discussed at the meeting, and if there was any discussion, it was very general and vague. He testified Ms. Lu said to him he would have more time to exercise after retirement. He made a comment about pursuing an advanced degree at the University of Cologne in Germany, but he testified he said that just to restore his dignity. Mr. Chowne testified the meeting was short, ending abruptly.

[13] Ms. Lu testified to a different version of events. She testified she shared with Mr. Chowne that she needed to spend more time with her father in China. She addressed the complaints with respect to student management generally. She advised him she was planning a change in the school structure and wanted to hire a new principal. She offered to him the role of senior consultant or the school director on a part-time basis. She told him he could do part of her job as school director, as she was going to be spending more time in China. In general, Ms. Lu advised him his role would be to assist her in supervising the new principal, accreditation issues and the registration of the online school.

[14] Ms. Lu testified Mr. Chowne seemed pleased with her proposal, and he offered the role of vice principal as another possibility. Mr. Chowne mentioned this would allow him to obtain his PhD in University of Cologne. Ms. Lu was surprised and asked if he was planning to move to Germany. Mr. Chowne responded he could do the degree online. Ms. Lu testified that she was aware Mr. Chowne had been experiencing stress in his personal life and wanted more time to exercise. Ms. Lu's understanding was Mr. Chowne agreed with her proposal to switch to part-time work.

[15] Ms. Chowne made a handwritten note to file immediately after the meeting. The note was dated May 26, 2023, and read "Meeting with Daniel, he agreed to change to part-time from Sep 2023, considering taking Ph.D. with University of Koln, Germany". A time of 4:30 pm was written.

**Emails of May 26 and 27, 2023**

[16] Ms. Lu sent Mr. Chowne an email on May 26, 2023 at 9:46 p.m. with the subject line "Re: Retirement Plan – Daniel Chowne":

Hello Daniel,

Further to our meeting this afternoon, this is to confirm that you have agreed to change to part-time (0.5 FT) from September 2023. Your position will be Senior Consultant or School Director, or Vice Principal, which is to be determined.

We will start the process searching for a new principal and you will support the searching process.

It has been a great pleasure working with you. Thank you for your continued contribution, support and cooperation.

Have a nice weekend.

Amanda

[17] On May 27, 2023 at 8:26 a.m., Mr. Chowne responded:

Hello Amanda

Thank you for meeting with me yesterday afternoon. It has been a great pleasure working with you, as well.

All the best, Daniel

[18] Mr. Chowne testified he was still in shock from the events of the previous day, and felt betrayed to be told of his retirement plan when he did not have any plans to retire. He testified he sent a “bread and butter” response that did not indicate any agreement with what Ms. Lu said in her email, but only an acknowledgement that her email was received.

**Email of June 4, 2023**

[19] Mr. Chowne emailed Ms. Lu on June 4, 2023, asking for a copy of his employment agreement from 2013, “to refresh memory of my obligations”. Ms. Lu responded she will do so, and testified she provided him a copy the next day at school.

**Email of July 4, 2023**

[20] The evidence is that from May 27 to July 3, 2023, the parties did not discuss further the proposed change of Mr. Chowne’s position to senior consultant. They saw each other regularly at the school but neither side brought up the subject. Ms. Lu testified she sent an email on July 4, 2023 to follow up on the discussion from May 26, 2023.

[21] Ms. Lu sent an email on July 4, 2023 to Mr. Chowne:

Hi Daniel,

Please advise your preferred working hours from September 2023 semester. I would suggest:

8:00 am – 1 pm Monday to Friday

Your salary will be adjusted accordingly. If additional time is needed, hour rate will be applied as pro-rated.

Please confirm your thoughts and/acceptance.

Amanda

**Emails of July 6, 2023**

[22] Mr. Chowne responded to the July 4 email on July 6, 2023 at 9:49 a.m.:

Hello Amanda and Kenwood

Thank you for your patience in these matters. I was not expecting the events of May 26, 2023 to take place, and I have taken the necessary time to reflect.

Upon receiving communications yesterday regarding the known staffing changes in the school starting in the current month, and wanting to contribute to the stability of the school, I will accept the role of 'senior consultant' on the scheduled date previously given in the correspondence.

All the best to Pattinson High School.

[23] Mr. Chowne testified by this email, he was accepting only the title of senior consultant, but the terms of the role have not been defined. His evidence is he was still negotiating the terms of any potential new role with the school. He was only selecting a title and not accepting a position. He testified many details about the new role were unclear, including the duration, as it appeared to be short term only and would end once a new principal was hired.

[24] Ms. Lu responded by email on July 6, 2023, at 6:09 p.m.:

Hello Daniel,

Thank you for your confirmation.

We will start the ad and process of searching for a new Principal and plan for the new principal to start for September 1, 2023. If it takes longer than expected, you will continue the Principal role until the new principal is hired.

Your working hour will be 8 am – 1 pm Monday to Friday from September 1, 2023:

- continue as Principal if the new principal is not hired yet; or
- as Senior Consultant if the new principal is hired.

You will continue to be in charge of:

- Ministry of Education inspection and school accreditation;
- D2L implementation;
- Ontario OSSD online school/program registration and implementation;
- Support student recruitment and student interviews;
- Support Human Resources hiring and management;
- Support curriculum development;
- Support school operation;
- and other area that we will review and confirm.

You are welcome to review the roles and responsibilities, we can then set up a time to review in details.

Thank you and have a nice evening.

Amanda

**Full site school meeting July 12, 2023**

[25] The school holds an annual meeting with all staff and faculty. In preparation for the meeting, Ms. Lu prepared an agenda. One of the items under human resources, “recognition of 15/10/5 years service at PHS” was “Daniel Chowne – 2013-part-time Principal/Senior Consultant from September 2023”. Ms. Lu texted Mr. Chowne on July 12, 2023, at 8:58 a.m., asking if he had reviewed the draft agenda she sent the previous day, and “as for your retirement plan, if you would like to wait to share later, I am fine. We can delete that part”. Ms. Lu testified she wanted to ask if Mr. Chowne wanted to include in the agenda the information about him changing to a part time role in September 2023, as some people preferred to share their retirement plans privately with colleagues.

[26] Mr. Chowne responded by text that the “description of my retirement plan may remain on the Agenda”. Mr. Chowne testified he wished to be transparent with the faculty and staff that he was in negotiations with the school to change to a part-time role.

[27] Mr. Chowne testified that the issue of his retirement or part-time status was not raised during the meeting. However, Mr. Chowne testified that also on the agenda was an indication that salary reviews for teachers were going to be limited while the school hoped to take back a building for a student residence. Mr. Chowne was concerned the school was prioritizing an investment property over teacher salaries.

**Meeting on July 14, 2023**

[28] Ms. Lu and Mr. Chowne had a meeting at the school on July 14, 2023.

[29] Mr. Chowne testified that during this meeting, Ms. Lu once again raised the issue of the complaints, which he believed had already been resolved. He testified that Ms. Lu discussed incidents which had occurred a long time before the meeting and criticized him for how he handled students. He believed after this meeting he could no longer work with Ms. Lu as he felt disrespected.

[30] Ms. Lu had a different view of the meeting. She testified the purpose of the meeting was to solicit Mr. Chowne's view of a potential internal candidate who was interested in the principal job. While Ms. Lu did discuss an email from the school counsellor sent to her on July 10, 2023 outlining some recent student complaints about Mr. Chowne, Ms. Lu testified that was not the main focus of the meeting. Ms. Lu was interested to know Mr. Chowne's thoughts on the potential internal principal candidate. Ms. Lu believed this person would be more suited to a vice principal role first, to gradually learn the duties of the job. She wanted to know if Mr. Chowne would continue as principal temporarily with the potential candidate being offered a job of vice principal.

[31] On July 19, 2023, Ms. Lu provided a copy of Michael Powell's resume to Mr. Chowne. Mr. Powell was being considered for the position of principal. Mr. Powell did not have as much experience in education as Mr. Chowne, and he felt disrespected that he would be replaced by someone with less experience.

**Text messages on July 21, 2023**

[32] Mr. Chowne sent a text to Ms. Lu on July 21, 2023, at 8:04 a.m.:

Good morning Amanda

Given the unsatisfactory nature of your meeting with me on Monday July 17, your perspective on the July 6 communication is no longer valid. Thank you for your understanding.

All the best, Daniel

[33] Ms. Lu's response:

Good morning Daniel,

Please clarify the details. Monday July 17 meeting was about? Which part of July 6 communication is not valid? I have had too many meetings this week.

Thanks. Amanda

[34] Mr. Chowne's response:

Date correction: meeting in your office July 14

[35] Ms. Lu's response:

Ok noted. So you are no longer willing to continue the principal role, but as Senior Consultant. Please confirm. Thanks

From September semester.

Then I will not consider the option finding a Vice principal

[36] Mr. Chowne testified that he realized he could not continue working at the school for several reasons: the school's priority was, in his view, not to support education but real estate investments; Ms. Lu was going to keep bringing up past complaints that had been resolved; and the school was considering hiring a replacement principal with less experience than him. He testified the events of July 12, 14 and 19 led him to conclude he was not going to continue negotiations for a new position.

**Text message on July 22, 2023**

[37] Mr. Chowne sent a text on July 22, 2023, at 5:07 p.m.:

You constructively dismissed me on May 26, 2023

[38] Mr. Chowne testified he believed he had been terminated as he was told he was not going to be principal after August 2023.

[39] There was no response from Ms. Lu to this text. She testified she did not know what was meant by "constructive dismissal". She did not seek any legal advice at the time.

[40] Her focus was on hiring a new principal, as Mr. Chowne made clear in mid-July that he was not interested in continuing as principal if she hired a vice principal. The option of hiring the internal candidate as vice principal was not going to work. Ms. Lu testified she had not yet started the process of looking for a new principal which was top priority as the new semester was starting in September.

**The hiring of the new principal**

[41] Mr. Powell was hired as the new principal on July 28, 2023.

[42] Ms. Lu sent Mr. Chowne an email on July 31, 2023, advising that the school had a new principal and she planned to introduce him to the school on August 9, 2023. Ms. Lu asked Mr. Chowne to prepare a transition checklist for the principal position.

[43] Mr. Chowne testified he did not meet Mr. Powell on August 9, 2023. On the contrary, Ms. Lu testified the men did meet, as she had introduced them. Ms. Lu asked Mr. Chowne to prepare a transition checklist. Mr. Chowne testified he ignored the request as he did not agree with being replaced.

**Events of August 2023**

[44] On August 11, 2023, at 11:50 a.m., Ms. Lu emailed Mr. Chowne:

Hello Daniel,

The principal email address will be assigned to Michael Powell as of September 1<sup>st</sup>. As for your new school email address as Senior Consultant, I would suggest the following two options:

consultant @pattinsonhighschool.ca

daniel.chowne@pattinsonhighschool.ca

Please advise your thoughts.

Thanks Amanda

[45] Mr. Chowne responded at 11:52 a.m. that the consultant email address was acceptable.

[46] Ms. Lu responded at 11:57 a.m., advising that Mr. Chowne could keep the school key and asking if he was agreeable to sharing the same office as Mr. Powell. Mr. Chowne responded at 12:00 p.m. that he did not need the school key, and that he was not agreeable to sharing an office. Ms. Lu responded at 12:06 p.m. that Mr. Powell was agreeable to sharing the office, and asked what Mr. Chowne would suggest.

[47] Mr. Chowne testified that he had chosen the consultant email address but there was no position attached to the email address. He did not want to keep the school key as he was no longer principal, so he did not need it.

[48] Ms. Lu testified there was a new teacher orientation on August 16, 2023. She had sent emails asking Mr. Chowne if he would be available. Ms. Lu testified Mr. Chowne was not present for the new teacher orientation and Mr. Powell had to conduct it instead.

[49] Mr. Chowne was out of town from August 18, 2023, to September 3, 2023. On August 30, 2023, he sent an email to the accounting department, asking for his cheque to be ready on September 5, 2023. Mr. Chowne also asked for a record of employment:

Also: Please issue the applicable Record of Employment showing the relevant box to be “constructive dismissal” as evident in layoff from the position of principal, due to a previously hired replacement.

[50] Ms. Lu responded a couple of hours later:

Hi Daniel,

Hope all is well in St. John and you have enjoyed your family time.

As you will continue working as part time Senior Consultant, I will consult with our lawyer Michael Miller about ROE.

If you do not want to stay on payroll, and ROE is to be issued, the word of “Constructive Dismissal” is not appropriate reflection on ROE, rather than “Retirement”. The new replacement’s employment agreement starts on September 5, 2023. Before that date, it is transition and training time.

I hope that the reason that you choose the wording “constructive dismissal” is not to plan a future dispute. Again the wording “constructive dismissal” is not actual reflection of what happened.

We can discuss further upon your return, or via email.

At the best,

Amanda

**The start of the school year September 2023**

[51] Mr. Chowne attended Pattison for half-days on September 5, 6 and 7, 2023. He testified he worked on the external evaluation report and ensured it was uploaded on to the server. Mr. Chowne explained that he only attended the school out of courtesy, to answer any questions if required. His view was he did not have a job there anymore. He taught a class for a teacher who was away.

[52] On September 6, 2023, Mr. Chowne used his consultant email address, copied to Ms. Lu and others at Pattison, to send an email to his contact at the Ontario online school project about the completion of required components to launch the program. He wrote "...effective September 05 2023 I have transitioned to the role of consultant, and Mr. Michael Powell is appointed to the role of principal". He testified he wrote the email in the best interests of the school to keep the communication flowing on this project.

[53] On September 7, 2023, at 10:25 a.m., Mr. Chowne responded to an email sent the previous day from the Ministry of Education private school branch in Ontario. Mr. Chowne responded using his consultant email address, advising that the required fee has been forwarded for the school's application for validation as a private school. Ms. Lu followed up at 10:44 a.m., asking Mr. Chowne if he wished his emails to be forwarded to his consultant email address. Mr. Chowne responded at 10:45 a.m. that he agreed with this approach.

[54] On September 7, 2023, at 6:01 p.m., Mr. Chowne sent the following email to Ms. Lu and the accounting department which reads in part:

Colleagues:

This email constitutes the 3<sup>rd</sup> request for a Record of Employment to be issued on my behalf electronically to Services Canada and to me in hard copy, in recognition of the constructive dismissal that took effect at end of day Thursday August 31 2023.

The Record of Employment recognizes a 10 year 4 month employer-employee relationship that was ended by the employer's email transmission of Friday May 26 2023...

Thank you, Daniel

[55] On September 7, 2023, at 7:36 p.m., Mr. Chowne sent the following email to Ms. Lu:

Hello Amanda

It is unfortunate that you are mistaken with regards to BC Employment Standards, and its clearly stated requirements.

Please inform your newly appointed principal that my continued support for him, and additional support to the Fall 2023 Faculty, must come to an end

effective immediately. To do otherwise, would indicate that I accept your mis-interpretation of the BC Employment Standards Act.

You are mistaken, and insufficiently informed. Otherwise, I was pleased to help the principal with ToC coverage of Lydia Walker's classes.

To confirm: I will not be at Pattison High School on Friday September 08 2023.

I will instead devote my focus to the Employment Standards Branch.

All the best to Pattison and Timesing.

[56] On September 7, 2023, at 8:06 p.m., Mr. Chowne forwarded the above message to faculty and staff members at the school with the following message:

FYI: I apologize for submitting this message to you, at this time of day. I know that all of you work very hard to deliver the highest quality of pedagogic service to the students.

I wish each and everyone all the very best, Daniel

[57] Ms. Lu responded at 8:23 p.m.:

Dear Daniel,

We respect and accept your decision to immediately terminate your employment with Pattison High School as Senior Consultant which started on September 1, 2023.

We thank you for your contribution to Pattison High School in the past and wish you all the best in your future endeavour.

All the best.

Amanda

[58] Mr. Chowne agreed the school had printed business cards for him with his new title of senior consultant. He testified the cards were unnecessary as he did not need them for the three days he was at the school. He left the business cards behind when he left the school.

[59] Mr. Chowne was paid for the three days in September 2023. He testified that he did not ask to be paid and was at the school as a professional courtesy to answer questions if needed. He did not consider himself to be working at the school as, in his view, he did not have a job in September.

**Events after September 2023**

[60] Mr. Chowne was denied employment insurance benefits. He sought a reconsideration where he was unsuccessful.

[61] He has looked for work, applying for 31 jobs and receiving five interviews. He did not receive any job offers.

[62] He testified that since he left Pattison, he has been sad, depressed and unengaged. He has experienced mood changes and low energy. His two daughters and a friend testified that he is no longer the same person, and that work has always been very important to him.

**Evidence on the Counterclaim**

[63] As Pattison is an independent school, the Ministry performs annual inspections. These inspections alternate between monitoring inspections and an external evaluation inspection. The external evaluation inspection is more rigorous and includes a two-day on-site inspection with two Ministry evaluators. Prior to the scheduled inspection by the Ministry's External Evaluation Committee ("EEC Inspection"), the school is to submit its report in a prescribed form to the Ministry. The EEC Inspection is to ensure the school is compliant with its statutory and policy requirements. Ms. Lu testified that one of Mr. Chowne's main duties was to maintain Pattison's government accreditation.

[64] In May 2023, Pattison received notice of the EEC Inspection scheduled for October 16 and 17, 2023. The notice directed the school to a template for completing the External Evaluation Report (the "Report"), which had to be submitted by September 22, 2023. The Report template includes instructions for the schools as to what was required. Ms. Lu testified that Mr. Chowne's duties included completing and submitting the Report. She testified that he had done so for the 10 years he had been principal. Mr. Chowne testified that his view was that he was not in charge of preparing and submitting the Report, but that it was a task he did because no one else did it.

[65] Mr. Chowne received notice in May 2023 of the approaching EEC Inspection. He testified he started working on the Report as soon as he received the Report template, as it was a large task. He worked on it daily whenever he had time. His evidence is when he left the school on September 7, 2023, he had completed the Report to the extent that he had the data, and there were some parts he could not complete as he did not have the necessary data.

[66] After Mr. Chowne left the school, Mr. Powell took on the task of finalizing the Report before the submission deadline. Mr. Powell testified he was mainly checking if all required documents were present, and not conducting any substantive review of the content of the documents, due to limited time and his unfamiliarity with the school.

[67] The EEC Inspection was conducted on October 16 and 17, 2023. The Ministry evaluators met with Mr. Powell, Ms. Lu, the school counsellor Mr. Puckett and others. On the second day of the inspection, the school was advised the Ministry had significant concerns with the school's compliance with its statutory and policy requirements.

[68] The Ministry sent a letter on October 26, 2023, identifying 16 statutory and 12 policy deficiencies. Among the deficiencies identified were the following:

- The school was required to update its basic risk and threat assessment training and Safe School Coordinator roles;
- The school was required to update and align its Student Records Policy with current regulations and requirements;
- The school was required to clarify and update its Protection of Privacy Policy;
- The school was required to update and align its Anaphylaxis Policy;
- The school was required to update its Harassment and Bullying Prevention Policy;
- The school was required to develop a Special Education Policy;

- The school was required to ensure its offers required instructional hours;
- The school was to ensure its graduation program met requirements;
- The school was required to ensure one subject restricted teacher has appropriate teaching assignments;
- The school was required to demonstrate that maintenance and safety procedures were in place;
- The school was required to maintain a log of drills and safety checks;
- The school was required to confirm it had been inspected by the fire department;
- The school was required to develop a Communicable Disease Plan;
- The school was required to review and correct all student PR cards;
- The school was required to update and operationalize its Child Abuse Reporting Protocols;
- The school was required to update its Educational Resource Policy;
- The school was required to update Principal/Teacher Evaluation Protocols;
- The school was required to further develop professional development opportunities;
- The school was required to provide evidence of incorporating student performance data analysis in its strategic planning;
- The school was required to develop and operationalize its Emergency Preparedness Protocols;

- The school was required to update and contextualize its Student Supervision Protocols;
- The school was required to revise its Student Discipline Protocols;
- The school was required to update and align its Anti-Smoking Protocols with the *Tobacco and Vapour Products Control Act*, R.S.B.C. 1996, c. 451;
- The school was required to revise and contextualize its Field Trip Protocols;
- The school was required to revise and contextualize its Transportation Protocols;
- The school was required to update its Water Testing Policy;
- The school's intermediate program needed to meet requirements.

[69] The Ministry advised the school that it was required to address these deficiencies by November 17 and December 1, 2023, and there would be two follow-up inspections. The Ministry advised Ms. Lu that the school needed to develop a school closure plan in the event the school had to be shut down.

[70] Ms. Lu testified she was shocked and devastated by this development. She sprung into action, hiring a consultant with experience in accreditation inspections. She removed Mr. Powell from his part-time teaching responsibility to allow him more time to work on addressing the deficiencies. The school hired a vice principal and put together a team focussed on the resubmissions. A lot of work was done by the vice principal Erin Pettinger to ensure the student files met the graduation program requirements, by creating clear guidelines on transfers of credits from other institutions and proper reporting of equivalent credits to the Ministry. Ms. Pettinger testified she focussed on updating the 110 student files. Mr. Powell focussed on writing and updating the policies and procedures.

[71] The school was successful in its resubmission. Ms. Lu testified she believes the school exceeded Ministry requirements. The school did not lose its certification.

[72] Ms. Lu testified that the team put in approximately 1,200 hours towards addressing the deficiencies. She claims approximately \$50,000 in damages for the cost of the additional work and \$100,000 in damages for her poor mental health during this period, as well as the loss of reputation of the school.

**Issues**

[73] The issue raised on the claim is:

1. Was the plaintiff constructively dismissed?

On the counterclaim, the issue is the following:

2. Is the plaintiff liable to the defendant for preparing an inadequate Report and for the school failing inspection?

**Credibility and Reliability**

[74] At trial, both sides attacked the credibility of the other. Mr. Chowne argues Ms. Lu was not credible, alleging that she provided the Court with self-serving evidence and was evasive at times during her cross examination. Timesing argues the plaintiff's evidence was inconsistent and contrived to support his position in this litigation.

[75] I find the best evidence of what occurred is the parties' written communications. The emails and text messages were written at the time of the events and are the clearest indication of the parties' actions and intentions. I find in general Mr. Chowne tried at trial to explain his own written words in a manner to conform with his litigation position that he was constructively dismissed. Some of his explanations I find difficult to accept, as they go against a plain meaning of what he wrote at the time. Where there is a conflict in evidence, I prefer the evidence of Ms. Lu, as her evidence of what was discussed between the parties and how she understood their communications is consistent with what was written at the time.

**Was the Plaintiff Constructively Dismissed?**

**Legal Principles**

[76] A constructive dismissal occurs when an employer makes substantial, unilateral changes to the essential terms of an employee’s contract of employment, the employee does not agree to these changes, and consequently leaves the job: *Farber v. Royal Trust Co.*, [1997] 1 S.C.R. 846, 1997 CanLII 387 (SCC) at para. 24; *Coutlee v. Apex Granite & Tile Inc.*, 2020 BCSC 315 at para. 176.

[77] The leading case on constructive dismissal is *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10 where the following definition is provided:

[30] When an employer’s conduct evinces an intention no longer to be bound by the employment contract, the employee has the choice of either accepting that conduct or changes made by the employer, or treating the conduct or changes as a repudiation of the contract by the employer and suing for wrongful dismissal. This was clearly stated in *Farber*, at para. 33, the leading case on the law of constructive dismissal in Canada. See also *In re Rubel Bronze and Metal Co. and Vos*, [1918] 1 K.B. 315, at p. 322. Since the employee has not been formally dismissed, the employer’s act is referred to as “constructive dismissal”. The word “constructive” indicates that the dismissal is a legal construct: the employer’s act is treated as a dismissal because of the way it is characterized by the law (J. A. Yogis and C. Cotter, *Barron’s Canadian Law Dictionary* (6th ed. 2009), at p. 61; B. A. Garner, ed., *Black’s Law Dictionary* (10th ed. 2014), at p. 380).

[Emphasis added.]

[78] There are two forms of constructive dismissal: (i) an employer may commit a single unilateral act that breaches an essential term of the employment contract; or (ii) may commit a series of acts that cumulatively would lead a reasonable person to conclude that the employer no longer intended to be bound by the employment contract: *Potter* at para. 43. The employee then has a right to treat the employment contract as terminated: *Farquhar v. Butler Brothers Supplies Ltd.*, 23 B.C.L.R. (2d) 89, 1988 CanLII 185 (B.C.C.A.) at 3. The employee also has a right to accept the employer’s unilateral change in the contract and condone the modification. The employee is given a reasonable amount of time to decide: *Watson v. Seacastle Enterprises Inc.*, 2007 BCSC 365 at paras. 34–35.

[79] The onus is on the employee to establish on a balance of probabilities that they were constructively dismissed: *Potter* at paras. 31, 70; *Rampre v. Okanagan Halfway House Society*, 2018 BCSC 992 at para. 64. Whether or not constructive dismissal has occurred is a question of fact. The plaintiff also has the burden to establish entitlement to damages: *Rampre* at para. 64.

**Position of the Plaintiff**

[80] Mr. Chowne argues he had no agreement with Timesing to work in an alternate position of senior consultant. He argues any discussion with Ms. Lu about being a senior consultant was vague, with uncertain terms that were insufficient to form a contract. Further, he argues there was no consideration for him to work as a senior consultant which had no benefit to him: *Matijczak v. Homewood Health Inc.*, 2021 BCSC 1658 at para. 30. As I understand his position, Mr. Chowne argues because there was no binding agreement for him to work as a senior consultant, he was effectively constructively dismissed.

[81] In the alternative, the plaintiff argues he was wrongfully dismissed without cause when the defendant replaced him as principal.

[82] Mr. Chowne argues he is entitled to damages for a reasonable notice period of 20 months based on his annual salary of \$82,500. In addition, he seeks aggravated damages of \$30,000 as he argues the dismissal was done in bad faith, in breach of the employer's duty of good faith and fair dealings, causing him resulting damage: *Lau v. Royal Bank of Canada*, 2017 BCCA 253 at para. 17. He also seeks punitive damages in the amount of \$100,000 for what he terms highhanded, malicious and reprehensible conduct of the defendant: *Ojanen v. Acumen Law Corporation*, 2021 BCCA 189 at paras. 76–78.

**Position of the Defendant**

[83] The defendant denies that it dismissed, constructively or wrongfully, Mr. Chowne from his job. The defendant says the plaintiff voluntarily resigned from his

job when he left on September 7, 2023. As such, the defendant's position is no damages should be awarded to the plaintiff.

**Analysis**

[84] Based on the evidence, I find the plaintiff was not dismissed, but that he chose to resign from his employment with the defendant. With respect, the evidence does not support the plaintiff's contention that he did not accept a position as senior consultant with the school.

[85] Starting with the meeting on May 26, 2023, Ms. Lu advised Mr. Chowne that she was going to change the school structure and would be hiring a new principal. I accept that Ms. Lu discussed with Mr. Chowne that he could work part-time as a senior consultant or school director. While Mr. Chowne argues no such alternate positions were discussed, I accept the evidence of Ms. Lu that she did discuss the alternate positions at the meeting. Her evidence is Mr. Chowne then raised the position of a vice principal as another role he could accept. Ms. Lu discussed generally that Mr. Chowne would continue with the accreditation process and the Ontario online school project in the new role. This is supported in the evidence by the email she sent later that night, confirming their discussion. There would have been no reason for Ms. Lu to include information in the email that they discussed his retirement plans; that he agreed to change to part time in September 2023; and the new role could be called senior consultant, director or vice principal, if these details were not accurate. The next morning, Mr. Chowne sent a response, thanking Ms. Lu for the meeting. If Mr. Chowne did not agree at the meeting to change to part-time, one would have expected him to say so.

[86] I accept the discussion during the May 26, 2023, meeting likely came as a surprise to Mr. Chowne. He testified that he was in shock. However, by the next morning, having thought about it and being away from the school, if he did not agree with what was set out by Ms. Lu in the email it was incumbent on him to say so. Alternatively, he could have chosen not to respond if he felt upset. But he responded and appeared to agree with her understanding of the meeting.

[87] Ms. Lu did not take Mr. Chowne's email of May 27, 2023, as acceptance. She waited to see if he wished to discuss further. When he asked for a copy of his employment contract, she provided it to him the next day. When she did not hear further from him on the issue, she sent another email on July 4, 2023, setting out his hours of work and pay, asking for his feedback. On July 6, 2023, Mr. Chowne responded that he had "taken the necessary time to reflect" and that he "[would] accept the role of 'senior consultant' on the scheduled date previously given in the correspondence".

[88] At trial, Mr. Chowne's explanation for this email was that he was merely accepting a title, not agreeing to anything further. However, that is not what he wrote in the email. He did not say he was not accepting any new role but only choosing a title, or that he was still considering the matter more generally. It is also unclear what Mr. Chowne means by only accepting a title. In my view, Mr. Chowne is retroactively trying to infuse a meaning into his July 6 email that does not fit with what happened.

[89] Ms. Lu responded the same date. She sent an email setting out specifics of his hours of work and his areas of responsibilities. She said in the email that the two could discuss in detail the role and responsibilities after he had an opportunity to review them. Mr. Chowne at trial testified that the list of responsibilities was vague. However, the evidence is Mr. Chowne never followed up to review if he had any concerns. Again, if Mr. Chowne did not agree to change to a part time role as senior consultant, it was incumbent on him to say so.

[90] I also do not accept Mr. Chowne's explanation of why he agreed to allow information about him changing to part-time/senior consultant in September 2023 to stay on the agenda for the school's full site meeting. The information was clearly intended to convey that he was going to work part-time and would no longer be principal starting in September 2023, in the context of retirement planning. His evidence at trial that he allowed this information to be included on the agenda because he wished to be transparent with the school community that he was in negotiations for a new role is difficult to accept. Announcing a switch to part-time work and stepping

away from the principal's role is significant. This item was not written to convey this was a possibility only being negotiated by the parties. I find Mr. Chowne agreeing to keep this information in the agenda is further evidence that he accepted he would be switching to a part-time role as senior consultant.

[91] There was a text message on July 21, 2023, where Mr. Chowne expressed that Ms. Lu's view of his July 6 communication was no longer valid. However, his text was not clear. Ms. Lu asked Mr. Chowne for clarification. He referenced the meeting they had on July 14, 2023, as the reason for his dissatisfaction. Ms. Lu's evidence is that she understood Mr. Chowne to be referencing her discussion with him on July 14 about the potential internal candidate, and whether Mr. Chowne would agree to stay on as principal so the potential candidate could work as a vice principal for a couple of terms to determine suitability. Ms. Lu then sent text messages stating her understanding that Mr. Chowne was not prepared to support the internal candidate as principal, that he was only interested in being a senior consultant, and that Ms. Lu had to look for a replacement principal. Ms. Lu then asked Mr. Chowne to confirm if what she understood was accurate. He did not respond. Mr. Chowne argues that Ms. Lu's interpretation of his text message is strained and incorrect. However, the evidence is he did not challenge her text that he was agreeing to be senior consultant.

[92] On July 22, 2023, Mr. Chowne sent a text saying he was constructively dismissed on May 26. I find this was the first time Mr. Chowne raised that he was possibly not in agreement with the change in his employment. However, even after this text, Mr. Chowne's actions were mixed as to whether he accepted the alternate position of senior consultant. That is, he did not act consistently to convey that he rejected the senior consultant position.

[93] Mr. Chowne agreed to use the consultant email address. He explained that it was only an email address with no job attached to it. I find his acceptance of the email address is further evidence that he accepted the alternate position. Mr. Chowne sent emails in September to the Ontario online school program with his consultant email address, stating that he was switching to a role as a senior consultant for the school.

Therefore, this evidence does not support his position that he never agreed to a senior consultant position.

[94] There is no evidence Mr. Chowne told Ms. Lu or anyone at the school that he would only return to the school for three days in September. The school had business cards made for him with the new title. Mr. Chowne testified they were not necessary for three days of work, and that since he did not need them he left them behind. However, the point is he never advised the school he was only going to be a senior consultant for three days. The school had the business cards made likely because it expected his employment to be longer. I accept the evidence of Ms. Lu that the senior consultant role was intended to be indefinite. I accept her evidence the Ontario online school project had huge potential as it could have higher enrollment. This was one of the areas Mr. Chowne would be working on as the senior consultant.

[95] While I acknowledge the change from full time principal to a part-time senior consultant role was a substantial change to his employment contract, Mr. Chowne had a reasonable amount of time to decide if he would accept this change or treat this as the school's repudiation of the employment contract and sue for constructive dismissal. Mr. Chowne from May to September did not reject the new role. Throughout May to September, Mr. Chowne's words and actions indicated he agreed to switching to part-time work. He expressly told Ms. Lu he accepted the role of senior consultant. While he sent a text message on July 22 that said his view was that he was constructively dismissed on May 26, he did not go further and state he was not accepting the new role. More importantly, he continued working throughout and did not leave his job. It was not until the evening of September 7, 2023, when he sent his last email that he indicated he was not returning to work at the school.

[96] I find a fair view of the evidence is Mr. Chowne agreed to change to a part-time senior consultant role starting in September. He later changed his mind and resigned after three days working as a senior consultant. The defendant did not dismiss him. While Mr. Chowne argues he never agreed to a senior consultant role, I find on the totality of the evidence he has not proven on a balance of probabilities that he was

constructively dismissed. It was up to Mr. Chowne to decide if he wished to accept the new part-time position. The evidence shows he did.

**The Defendant's Counterclaim**

**The Defendant's Position**

[97] The defendant brings a counterclaim, seeking damages for the plaintiff's failure in his duties to satisfactorily complete the Report and for his resignation without adequate notice. His employment contract required the plaintiff to provide 30 days notice of resignation. The defendant claims the plaintiff left the school in the lurch when he left his job suddenly, with an incomplete and inadequate Report.

[98] The defendant claims in breach of contract and in negligence. Under contractual breaches, the defendant claims the plaintiff failed in his duties to act in good faith, with honesty and integrity, to safeguard the interests and property of Pattison High School, and to carry out his duties in a respectful, professional, productive and efficient manner, as the Report was wholly inadequate. The defendant claims the plaintiff's resignation without 30 days notice was also in breach of the employment contract. The defendant claims the plaintiff's sudden resignation left the school unable to address the deficiencies in the Report.

[99] With respect to the breach of the employment contract, the defendant argues a substantial failure by an employee in relation to a specific contractual term that is fundamental to the employment contract can lead to damages, relying on *Kirby v. Amalgamated Income Limited Partnership*, 2009 BCSC 1044:

[378] Turning to the terms of the contract, the owner must establish that the employee failed to do something specifically promised or obviously implied in his or her employment contract. A claim for damages cannot be grounded in the argument that the employee did not perform as well as the employer expected. The position or skills the employee holds or purports to hold in the employment situation will be relevant, particularly if the act or omission is directly connected to the expectations of his or her employment.

[379] Although dissatisfaction in job performance may lead an employer to dismiss an employee with reasonable notice or payment in lieu, more must be required to establish a claim for damages. The central question must be whether the error or omission was sufficient enough to attach liability, that is, was it negligent to the extent that it caused damage to the employer. Breaches

permitting recovery would likely include misconduct that also justifies summary dismissal, since such conduct correlates to an employee's breach of a fundamental term of the contract. However, this analysis must be factually driven.

[380] Finally, the recovery of damages is only possible if the loss is directly connected to the breach, that is, it is actual and demonstrable. Damages for which the employer is partially responsible are not recoverable.

[100] Under the common law, the defendant claims in negligence. The defendant argues an employee may be held liable in negligence if they fail to perform in accordance with the required standard of care. The employee's level of wrongdoing must be high: *Douglas v. King* (*Litigation Guardian of*), 2008 ONCA 452 at para. 65.

### **The Plaintiff's Position**

[101] The plaintiff argues the defendant has not proven that he breached a fundamental term of his employment contract in the preparation of the Report. The evidence shows the plaintiff worked on the Report from when he received the notification of the EEC Inspection to his last day of work. Further, the plaintiff argues other employees and Ms. Lu (i.e. the employer) were also responsible for the failed inspection and no liability should therefore be imposed on him: *Movassaghi v. Steels Industrial Products Ltd.*, 2012 BCSC 1663 at paras. 209–210.

### **Analysis**

[102] I find the defendant has not proven the plaintiff is liable for any loss the defendant may have sustained due to the Report prepared by the plaintiff.

[103] The defendant has not proven that the plaintiff breached a fundamental term of the employment contract by not completing the Report prior to his resignation. His employment contract included a duty to maintain government accreditation. However, I do not find this general duty sufficient to attach liability to the plaintiff. There is no specific duty that requires the plaintiff to ensure the Report is completed before he resigns. His employment contract does not specify that he is solely responsible for ensuring the school maintains its accreditation. I accept Mr. Chowne's evidence that while he did prepare the Report in previous years, he also relied on teachers, the

counsellor and the director to do their part. As for his failure to provide 30-day notice of resignation, there is no evidence that more notice would have caused the school to pass the inspection. Further, there is nothing in his employment contract that specifies he would complete the Report by a certain date. When Mr. Chowne left Pattison, there were some weeks before the submission deadline. While the defendant argues it was due to his wrongful resignation—leaving without the requisite 30 days notice—the evidence does not prove that was the cause of the school failing the EEC Inspection.

[104] While the school failed its EEC Inspection, the evidence does not show it was due to the state of the Report as prepared by the plaintiff that resulted in the school not passing inspection. I find the defendant has not proven it was the plaintiff's early resignation and incomplete Report that led to the school failing inspection. The school with the plaintiff as principal had successfully passed multiple EEC Inspections before 2023. As the EEC Inspections are conducted every two years, the school would have successfully passed five previous EEC Inspections while the plaintiff was principal.

[105] The school had passed previous inspections with the policies that were found to be deficient in 2023. Ms. Lu testified that most of the policies and procedures which were found deficient were not new. For example, on the adequacy of the student record files in the counsellor's office showing the path to graduation, Ms. Lu testified these files were found to be incomplete by the evaluators. However, she testified the requirements as to the type of documents and type of information required to be included in these student files had not changed. The Court is not able to find the plaintiff liable for the failed inspection when the same policies submitted by the plaintiff were found to be sufficient in the past.

[106] The evidence shows other employees played important roles in the on-site inspection, particularly the principal, the counsellor and Ms. Lu. Both the principal and the counsellor were new in their jobs as of October 2023. The evidence is they were not as familiar with the contents of the files and policies as the plaintiff. The inspection included the evaluators asking questions at the school. The inspection was not done only on a review of the documents submitted. The evaluators may have been

dissatisfied with the verbal answers from the school staff. The plaintiff cannot be held responsible for what occurred during the inspection, as he was not present. The new principal agreed that there were sections of the Report submitted using what the plaintiff had written that were deemed acceptable by the Ministry; there was a section filled out by the new principal that was found deficient. The state of the evidence does not allow the Court to find on a balance of probabilities the plaintiff liable to the defendant for any damages it sustained due to the failed inspection.

**Conclusion**

[107] Both the claim and counterclaim are dismissed.

[108] In the circumstances, my preliminary view is each party should bear its own costs. If either party wishes to make different submissions on costs, they are to contact the registry within 30 days of this ruling to schedule a hearing.

“Chan J.”