

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Reid v. Allied Plumbing Heating & Air
Conditioning Ltd.*,
2025 BCSC 1679

Date: 20250829
Docket: S235974
Registry: Vancouver

Between:

Fraser William Reid

Plaintiff

And

Allied Plumbing Heating & Air Conditioning Ltd.

Defendant

Before: The Honourable Justice E. Sigurdson

Reasons for Judgment

Counsel for the Plaintiff:

J.L. Hankinson

Counsel for the Defendant:

R.S. Arora

Place and Dates of Trial:

Vancouver, B.C.
February 24–28, 2025
May 29–30, 2025
June 23, 2025

Place and Date of Judgment:

Vancouver, B.C.
August 29, 2025

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[1] Fraser William Reid claims damages for wrongful dismissal against his former employer, Allied Plumbing Heating and Air Conditioning Ltd. (“Allied”), where he had been the company’s controller for over eight years. On October 26, 2022, Allied gave Mr. Reid notice that his employment would be terminated on June 30, 2023. Mr. Reid was told that this eight-month period leading up to his termination date was a period of working notice, in which he was expected to carry out his usual duties, with no changes to the terms and conditions of his employment.

[2] During the eight-month working notice period, Mr. Reid’s duties were altered. On April 3, 2023, following a change to his office location, Mr. Reid advised Allied of his view that he had been constructively dismissed.

[3] The issues in this case arise under the following headings:

- a) Sufficiency of notice: whether the eight months working notice given to Mr. Reid was reasonable or whether another amount is appropriate; and whether Mr. Reid in fact acceded to the amount of notice offered and is now foreclosed from seeking a higher amount.
- b) Constructive dismissal: whether Mr. Reid was constructively dismissed in April 2023 due to Allied changing the fundamental terms of his employment contract. Mr. Reid asserts that he accepted Allied’s repudiation of the contract of employment on April 3, 2023. If he was not constructively dismissed, there is a question of whether Mr. Reid is entitled to reasonable notice less the period he failed to work due to his repudiation.
- c) Aggravated damages: whether Mr. Reid is entitled to damages based on Allied’s manner of dismissal and post-dismissal conduct.
- d) Counterclaim for overpayments: whether Allied is entitled to damages or set-off for payment of statutory holiday pay, vacation pay or professional dues to which Mr. Reid was not entitled.

[4] I have concluded that the notice provided to Mr. Reid was not reasonable, and that he was entitled to 15 months notice. I find that Mr. Reid was constructively dismissed during his working notice period. I do not find it appropriate to grant Mr. Reid aggravated damages. Nor do I find that Allied has made out its counterclaim for damages for overpayment of statutory or vacation pay.

Facts

The Evidence and Witness Credibility

[5] The only evidence led by the plaintiff was from Mr. Reid himself. After the plaintiff's case closed, the defendant brought a no evidence motion. I denied that motion on the basis there was some evidence on each of the central issues in the claim. Allied called four witnesses: John Bean, Lance Clarke, Aura Figuerido, and Robelyn Quiambal.

[6] At the commencement of trial, counsel advised there was no significant evidentiary gulf between the parties regarding the main events and their timeline. This turned out more or less to be the case. However, the defendant now asserts the plaintiff's evidence should be viewed as not credible on certain issues: specifically, his evidence about the documents supporting his vacation requests, and his evidence of injury compensable by aggravated damages. The plaintiff does not strenuously contest the credibility of any of the defendant's witnesses.

[7] I found Mr. Reid to be a generally credible witness. His memory was imperfect, which is human. Although there were some areas where distinctions or tensions arose between his direct and cross-examination, I would not conclude these give rise to significant credibility concerns. I address the specific issue of my conclusions on the evidence respecting vacation requests to follow, which is where the question of Mr. Reid's credibility was most acutely brought into question.

[8] The defendant's witnesses were also generally credible. Mr. Clarke's testimony was brief but direct. Mr. Bean's testimony was balanced and appropriately candid. Ms. Figuerido and Ms. Quiambal gave limited, though credible, testimony.

Findings

[9] Allied is a plumbing contractor that started out providing residential services with a small team. It has since grown to a commercial-focused operation employing 35 to 45 workers.

[10] Mr. Reid is a Certified Professional Accountant (“CPA”). Prior to working with Allied, Mr. Reid was the Vice President of Finance at Harbour Air. In the period before his employment with Allied, he held several contract positions. Mr. Reid began work at Allied on September 2, 2014.

[11] Throughout his employment with Allied, Mr. Reid was the company’s controller. In that role, he reported to the President of Allied, Mr. Clarke. Mr. Reid and Mr. Clarke were effectively the senior management team at Allied. The company is co-owned by Mr. Clarke and Barry Wajzer, but unlike Mr. Clarke, Mr. Wajzer did not take an active role in the day-to-day management of operations.

[12] Mr. Reid gave evidence of the nature of his role, including his responsibility for the following duties:

- a) Managing and supervising accounting personnel;
- b) Ensuring compliance with administrative policies and procedures;
- c) Implementing internal controls and financial information flow;
- d) Managing corporate credit cards’ expenditures, accounting and reporting;
- e) Coordinating month-end accounting to ensure all requirements and cut-off dates were met;
- f) Preparing and distributing month-end accounting reports and financial statements;
- g) Liaising with external accountants;

- h) Administration and liaison with Manulife regarding a corporate profit-sharing plan;
- i) Managing and administering company payroll and benefits;
- j) Fiscal year end accounting and procedures;
- k) Monthly banking reconciliation;
- l) Administering Allied's contracts, including invoicing projects, ensuring monthly bonding requirements were in place, and assisting with budgeting, quoting and tendering of contracts; and
- m) Ensuring Allied's compliance with public regulators including Canada Revenue Agency ("CRA") and WorkSafeBC ("WCB") and paying their remittances.

[13] Mr. Reid received an annual salary of \$80,000, annual paid vacation, and participation in the company benefits program.

[14] The question of the number of days per week that Mr. Reid worked under his employment agreement became a factual issue at trial. Mr. Reid described how his working schedule changed over the years, where he transitioned to working a number of days per week at home, and a number of days in the office. Allied suggested that Mr. Reid was only working a three days-per-week position.

[15] Mr. Reid was hired in a full-time position as a senior employee (controller). There was not specific testimony led about whether, when he was hired, Mr. Reid's position was contemplated to be one based on the number of hours or days worked per week or based on completion of responsibilities. The evidence indicated that Mr. Reid requested the ability to work from home a certain number of days per week, and that he agreed to no increase in pay, or a reduction in pay, in recognition of his working from home status being a trade-off. I did not hear evidence that indicated that at any point he was considered a less than full-time employee, other than that Mr. Bean stated that belief.

[16] Given the evidence before me, I conclude that the position of controller is a senior position with a high degree of responsibility for both internal and external management of financial information. In that role, Mr. Reid was not expressly designated as an employee expected to work a number of days or a number of hours, but to be responsible for carrying out the duties within his role in whatever time that occupied. His remuneration was salaried, not based on hours or days worked. He was expressly a full-time employee with managerial responsibilities.

[17] Under such an arrangement, I conclude that the meaningful concern for someone in his position was not how many or which days he worked in the office versus at home, but whether his responsibilities were fulfilled. I do not conclude there was any evidence of a clear change in the employment agreement prior to his termination that reduced Mr. Reid's status from full-time to reduced or part-time employee.

[18] Allied notified Mr. Reid of his termination by letter on October 26, 2022. The termination letter set out that the terms and conditions of Mr. Reid's employment would continue until June 30, 2023, providing an eight-month period of working notice. Mr. Clarke provided the termination letter to Mr. Reid. The letter states in part:

As discussed, until June 30, 2023, you will continue to be employed by Allied and you will be expected to carry out your usual workplace duties and responsibilities. The terms and conditions of your employment will remain unchanged, until your employment ends on June 30, 2023. It is Allied's expectation that you will work with the incoming CFO to ensure a proper transition.

[19] The letter offers time off for employment interviews and a reference letter. Mr. Reid testified that no discussion occurred prior to the letter being provided, and no meeting took place with Mr. Clarke following the letter's delivery. Mr. Reid testified the dismissal was not anticipated and he was taken aback by it.

[20] Mr. Reid was introduced to Mr. Bean about two hours after receiving the termination letter. Mr. Bean would be his replacement in the role of controller and the new Chief Financial Officer ("CFO"), and would oversee him during the transition

period. Mr. Reid testified the meeting was uncomfortable, but that he understood Mr. Bean was put in a difficult position. Mr. Reid and Mr. Bean conducted themselves civilly despite the understandable tension.

[21] Mr. Reid expressed that he expected and intended to keep doing his job, including his existing responsibilities, until the end of the notice period.

[22] However, Mr. Reid's job duties began to be changed shortly after notice of his termination. Mr. Reid submits that his duties were reduced according to the following approximate timeline:

- a) Management and supervision of accounting personnel: removed October 26, 2022.
- b) Compliance with administrative policies and procedures, internal controls and financial information flow: removed October 26, 2022.
- c) Administering contracts: removed October 26, 2022.
- d) Month-end accounting coordination: removed December 2022.
- e) Fiscal year end accounting procedures: removed December 2022.
- f) Administration/liaison with Manulife regarding profit sharing plan: removed December 2022.
- g) Month end accounting reports and financial statements: removed December 2022–January 2023.
- h) Managing corporate credit card expenditures, accounting and reporting: removed February 2023.
- i) Company payroll and benefits: anticipated to be removed April 2023.

[23] Mr. Reid gave evidence that he stopped performing the above tasks on the noted dates. He said he did not carry out certain other tasks during the notice period,

including ensuring regulatory compliance with CRA and WCB and payment of remittances to those bodies, as well as liaising with external accountants. He testified this was due to the timing of those tasks and whether their completion was called for within the period.

[24] Mr. Reid's submission is that as of April 3, 2023, because of the changes to his responsibilities, his usual duties had diminished from the full complement of those he previously performed, which were befitting a corporate controller, to being responsible only for reconciling the monthly bank account statements.

[25] Allied characterises this course of events somewhat differently, although many of the underlying facts are fundamentally consistent. I certainly accept the proposition advanced by Allied that it was natural during a period of working notice to see the duties of the departing controller be gradually transferred to the incoming CFO. For the most part, however, Allied does not contest that those duties were no longer to be performed by Mr. Reid.

[26] Allied is correct that Mr. Reid's evidence was tempered on cross-examination. Whereas in direct testimony he characterized the removal of various responsibilities as more sudden or "black and white", on cross-examination he conceded that certain tasks were ones he understood to have been removed because of the timing of the requirements associated with those tasks. Allied's evidence and Mr. Reid's cross-examination suggested that in some cases, Mr. Reid made assumptions based on other surrounding circumstances that tasks had been taken off his plate, but that this was not done expressly. Allied argues, for example, that Mr. Reid was not explicitly deprived of his duty to prepare the monthly financial statements, but made inferences that he was no longer required to do so.

[27] However, Allied did not lead evidence to show that the inference or assumption drawn by Mr. Reid was incorrect, and did not lead evidence contradicting the evidence that Mr. Reid was no longer responsible for the tasks he felt had been removed, or that he was prompted by Allied to carry those tasks out

and refused to do so. The result is therefore essentially the same: Mr. Reid's duties were altered.

[28] Allied argues there were other tasks offered to Mr. Reid which could have filled his plate during the transition time, a point on which they also led evidence. For example, Mr. Bean gave evidence that although Mr. Reid was cooperative in continuing to prepare accounting data and analysis during the notice period, he was not open to taking on work related to bringing related companies in Allied's corporate group into the company's accounting processes. His responses refusing certain requests were characterized by Mr. Bean as being like "sand in the gears" of the company.

[29] The evidence suggests that Mr. Reid was reluctant to take on work that would alter his responsibilities (i.e., doing accounting work for the related companies rather than Allied). This appears consistent with Mr. Reid's overall position that the notice period was represented to be one in which his duties and responsibilities would remain the same. Mr. Reid took the view that he did not work for those companies, and doing so was not within his mandate; he was not disabused of this notion by Allied. In the evidence, Mr. Reid's communication about these tasks was curt. Allied also did not communicate that the purpose of these proposed assignments was to ensure Mr. Reid had some purposeful work to do, consistent with his skills and expertise, during at least part of the notice period.

[30] It is clear from these interactions that there was ongoing tension and discord among Mr. Reid and Allied leadership. The fact is that the parties were unable to work particularly effectively together during that notice period; however, this does not mean the terms of the termination that had been put forward by Allied were adjusted.

[31] Allied's evidence indicated there were a range of reasons driving Mr. Reid's termination, including the company's ongoing growth, and that it would benefit from a CFO. Mr. Clarke also testified that Mr. Reid had a difficult relationship with him, and that Mr. Reid had difficulty with interpersonal skills, including with vendors, consultants and employees. There were no suggestions of any disciplinary steps

taken during the notice period, or that Mr. Reid's termination was for cause, nor that Allied made efforts to re-evaluate or renegotiate the parameters of the notice period.

[32] In general, I accept Mr. Reid's interpretation of the significance of what transpired following his termination. While reducing Mr. Reid's duties, Allied did not communicate to Mr. Reid about the purpose for making these changes. By April 2023, most of Mr. Reid's duties had been taken away or altered.

[33] Mr. Reid submits that despite the express wording in the October 26, 2022 termination letter, by April 3, 2023, there was a complete change in his role. At that time, he was responsible for only a small fraction of his previous duties. He was not transitioned to alternative duties in support of Allied's business; he was left with very little or nothing to do.

[34] The final straw for Mr. Reid was a change that involved what he describes as being physically isolated in a separate and inferior office. Here too the evidence diverges to a degree.

[35] Mr. Reid claimed he was unilaterally moved from his existing office amongst other employees to an isolated office, located in a storage area or temporary space used by operational staff. He described the conditions in that space as inferior, without air conditioning to regulate for heat or cold, and lacking fresh air or windows. He termed it the office "from hell". Upon his move, he believed that other employees were told not to communicate with him. Mr. Reid submits that these events demonstrate the intention by Allied not to be bound by the employment contract.

[36] Allied's version of events related to the office move is somewhat different in terms of the conditions of the space, whether its temperature could be adequately regulated, and whether it should be viewed as an isolated location. For all these issues, Allied's witnesses attest the space is not all that bad. Allied led evidence that Mr. Reid's office move was in fact as a result of his having made an obscene gesture behind the back of another employee. Mr. Reid strenuously denies this occurred.

[37] It is my conclusion that the office space was indeed more isolated, if marginally so, given that it took only a few minutes to walk from one area of the offices to the other. Regardless, the office to which Mr. Reid was moved was separate, and it was not amongst the team with which Mr. Reid was accustomed to working. I also conclude the new office provided an inferior environment, one of a more transitory or impermanent nature, and was not generally intended for senior level staff as a full-time workspace.

[38] I do not, however, reach any specific conclusions about the reasons for Mr. Reid's transfer. It was not clear on the evidence whether and what Allied communicated about the rationale for the decision to move Mr. Reid. Mr. Wajzer, who informed Mr. Reid about the move, was not called as a witness. As mentioned previously, Allied did not take any formal disciplinary steps in relation to Mr. Reid during his notice period.

[39] On April 3, 2023, Mr. Reid wrote to Allied as follows:

Further to our meeting of this morning, this is to confirm in writing my decision to leave Allied Plumbing Heating & Air Conditioning Ltd prior to the stipulated termination date of June 30, 2023 as outlined in your October 26, 2022 termination of employment letter to me. As I informed you this morning, I feel I have been "squeezed out", and that you have made circumstances such that I had no other rational alternative, other than to quit. I told you, and further substantiated below, I feel I was **constructively dismissed**.

[Emphasis in original.]

[40] On April 13, 2023, Allied took the position that Mr. Reid had resigned from his employment.

[41] Mr. Reid testified that his termination by Allied affected his mental health. He experienced surprise, confusion, loneliness and sadness. He understood the termination but found the working notice period difficult. He had difficulty sleeping and was very uncomfortable with the situation. He did not seek professional assistance for this, although he described his condition as feeling depressed.

[42] Following his termination, Mr. Reid experienced some distress. Despite this, he took steps to seek alternate employment and commenced more actively looking for work in about May 2023. To do so, he conducted job searches on an online platform, using criteria reasonably related to his experience and qualifications. Positions he searched for included accounting clerk, accounts payable manager, senior accountant and assistant controller. Some of the available positions, such as accounts receivable or data entry supervisor positions, would have been ones for which his skills exceeded the requirements and so were less suitable. Mr. Reid applied for a range of positions with varying degrees of suitability, positions for which he was either qualified or overqualified for. He generally made applications by hand, delivering an application in-person and following up by phone. He testified he was willing to accept less responsibility in order to get back into the workforce.

[43] Mr. Reid testified he was not successful in obtaining any work during his job search. He had a limited number of interviews but was declined by phone or in a meeting with every person willing to speak with him. Mr. Reid felt his age affected his ability to get work, and some employers were not interested in hybrid work arrangements. Eventually, he decided to retire, and did so in early 2024.

[44] Allied's counterclaim seeks damages for overpayment of vacation time. On this issue, there was inconsistent evidence between Mr. Reid and Allied. Allied's claim is that Mr. Reid, in his position, overpaid himself for vacation days and for statutory holidays when he was not entitled. To establish this, Allied would need to prove Mr. Reid's entitlement to vacation, what he had been compensated for, what he had taken, what time was used or carried over, and whether any of that was double counted.

[45] Mr. Reid's evidence was that during his employment, he was entitled to three weeks paid vacation per year based on his full-time position. He would submit vacation request forms to Mr. Clarke and they would always be approved. He indicates he would use carried-over vacation days accumulated from prior years.

[46] In Mr. Reid's version of the documents, the forms indicate unused balances of vacation time carried over from the previous year, as well as a tally of those being taken pursuant to the request. His collection of Vacation Request Forms shows an entitlement to 30 days vacation, which he testified was accumulated and carried over from previous years. This tally is shown to be reduced in consecutive forms by the number of approved days of vacation taken. From July to September 2022, Mr. Reid's forms indicate the use of 14 days vacation, with 16 remaining in the amount accrued.

[47] The defendant asserts that Mr. Reid overpaid himself by both taking days off and paying out vacation pay in lieu. The version of some of the vacation request documents put in evidence by the defendant does not include a tally for the use of carried over vacation days but instead leaves that portion of the form blank. Ms. Figuerido testified that she received the version of the form without the tally filled in.

[48] The defendant argues that regarding vacation request forms, the court needs to make a finding of credibility. The defendant says the most logical finding is the plaintiff altered the vacation request forms to concoct evidence there was accrued time off to which he was entitled.

[49] I cannot find that this is the case. Although Mr. Reid was asked to explain the difference between the form adduced by the defendant and the form he put into evidence, his evidence was that the version in his possession was the one provided to Allied as a request. Mr. Reid was not asked in cross-examination if he altered the forms. The defendant had every opportunity to make that inquiry, and to put to Mr. Reid the theory that he had altered documents, but Allied declined to take that step. No one testified about whether there was another opportunity to add information to the form. No one had any clear account of who kept records in a central human resources or accounting system to tally vacation entitlement. Without an opportunity to give evidence directly on that allegation, it would not be consistent with fair trial process to assume or infer that the plaintiff fraudulently altered

documents based on argument alone: see *Chahal v. Chahal*, 2020 BCCA 147 at para. 35.

[50] I am left with no real explanation of the difference between the documents, and I conclude the burden is on the defendant to prove the adverse inference they seek on a balance of probabilities. The defendant did not do so.

[51] The defendant led evidence of a vacation policy for the company. It was unclear when the version of the policy before me was in effect, or whether Mr. Reid was aware of or had signed a copy of it, as was expected of employees. The policy in evidence includes a provision stating that any unused vacation days do not carry over, that is, “take it or lose it”. It also, however, contains the contradictory statement “Any Unused Vacation Pay (Banked) that remains outstanding at the end of the year can be paid out or remain in your vacation bank.” The forms used for vacation requests include the statement “all vacation days must be taken in the year of entitlement”. The documents and evidence before me are inconsistent and do not disclose a clear policy for use of vacation entitlements.

[52] The main conclusion that I can draw from the evidence about vacation pay is that during the time period in question, Allied did not have an effective system for documenting or tracking vacation entitlement, or for communicating about vacation with employees. I find this gap in Allied’s procedures at the relevant time does not translate into an adverse factual inference against the plaintiff on the counterclaim.

Issues

Reasonable Notice

[53] The law of wrongful dismissal is a form of contract law, which recognizes the important role of employment in individuals’ lives and in the community. Reasonable notice is a common law entitlement where an employment contract is terminated without cause. See *Machtiger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, 1992 CanLII 102 at paras. 19–21; *Zaraweh v. Hermon, Bunbury & Oke*, 2001 BCCA 524 at para. 18.

[54] Reasonable notice is intended to bridge the gap between dismissal and new employment, and to give an employee the opportunity to provide that employment: *Hogan v. 1187938 B.C. Ltd.*, 2021 BCSC 1021 at para. 41.

[55] The appropriate level of reasonable notice depends on the circumstances of each case. Factors in this analysis include, non-exhaustively: the character of the employment, the length of service, the age of the employee, and the availability of similar employment to that employee given experience, training, and qualifications: *Bardal v. Globe & Mail Ltd.* 1960, 24 D.L.R. (2d) 140, 1960 CanLII 294 (Ont. H.C.) at 145.

[56] An employer may give an employee working notice. Working notice can be difficult on all involved: the employee must remain ready and willing to carry out the work, and the employer must navigate dealing with an employee on their way out. If the employee's services are not required, the employer can pay them in lieu of notice. There is commentary in the authorities about how working notice can provide an easier transition period for an employee to seek alternative employment. That thesis was not borne out in this case.

[57] An employee may claim damages for insufficient notice, which is a claim for damages for breach of the employment contract. In general, courts will look to comparative situations for guidance on what constitutes a reasonable notice period. Courts have suggested that one month for each year of service is a sound starting point, but this only provides a guideline: *Linsdell v. Squamish W K Enterprises Inc.*, 2003 BCSC 188 at para. 5.

[58] There is a question in this case about whether Mr. Reid irrevocably accepted the eight-month notice period announced in his termination. I address that issue below.

[59] Mr. Reid submits that the following factors must be considered in determining the notice to which he was entitled:

- a) he is now 66 years old, was 65 at the time of trial, and was 63 years of age at the time of termination;
- b) he had worked for Allied for eight-and-a-half years, which is a lengthy service period;
- c) he was a controller, a senior position with a high degree of responsibility; and
- d) it was difficult for him to find comparable replacement work.

[60] Mr. Reid relies on case law which he says support a notice range of 1.66 months to four months per year of service for a controller. In submissions, Mr. Reid states that in analogous cases in British Columbia, the average is 2.65 months for every year of service as a controller.

[61] Age, Mr. Reid says, is of note in his case, because after a certain age it is progressively more difficult for an individual to obtain employment: *Ensign v. Price's Alarm Systems (2009) Ltd.*, 2017 BCSC 2137 at para. 42. Older employees face greater barriers, particularly over the age of 50, and workplaces tend to prefer younger employees, which justifies longer notice periods: *Mohammed v. Dexterra Integrated Facilities Management*, 2020 BCSC 2008 at para. 45; *Jimmy How Tein Fat v. PRGX Canada Corp.*, 2023 ONSC 6374 at para. 11 [*Jimmy How Tein Fat*]; *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229, 1990 CanLII 60 at 299.

[62] He submits that application of these factors, on review of comparable cases, justifies an award of 15 months notice.

[63] Mr. Reid referred to a range of cases in which reasonable notice was determined for individuals in the position of controller or accountant. He argues that these cases provide guidance, not a means to a formula or average. The case relied on as being most comparable was *Kolaczynski v. Benz Sewing Machines Ltd. (c.o.b. B&W Sewing Machine Co.)*, [2002] O.J. No. 1117, being one involving a controller, aged 59, who was employed for nine years prior to dismissal. In that case, the

Ontario Superior Court of Justice concluded that the reasonable notice period was 15 months.

[64] Alongside *Kolaczynski*, the cases relied on were:

- a) *Ellerbeck v. KVI Reconnect Ventures Inc.*, 2013 BCSC 1253;
- b) *Lamontagne v. J.L. Richards & Associates Limited*, 2021 ONSC 2133;
- c) *Fulmer v. Nordstrong Equipment Limited*, 2017 ONSC 5529;
- d) *Leung v. Doppler Industries Inc.*, [1995] B.C.J. No. 690, 1995 CanLII 2530 (B.C.S.C.);
- e) *Meyer v. Jim Pattison industries Ltd.*, [1991] B.C.J. No. 2895, 1991 CanLII 831 (B.C.S.C.);
- f) *Nicholson v. Masonite International Corporation*, 2014 BCSC 1247; and
- g) *Meyer v. MSA Motors Ltd.*, [1987] B.C.J. No. 2308.

[65] Mr. Reid notes that in all the cases relied upon, the employee in question was younger than Mr. Reid at the time of termination. Courts have recognized there are greater barriers to obtaining work, including at a senior level, at an older age, and accordingly notice obligations may be greater: *Mohammed* at para. 45. See, for instance, the Court's comments on reasonable notice in *Jimmy How Tein Fat*:

[11] Reasonable notice is intended to reflect an adequate period of time for the dismissed employee to find other comparable employment. In considering what a reasonable notice period is for an employee, the courts have taken into consideration the employee's age, tenure of employment, character of employment and the ability to find similar employment. In general, long-term employees receive longer notice. Similarly, senior employees receive longer notice on the theory that it would be more difficult for them to find reasonable replacement employment. Older employees also receive a longer notice period because the workforce tends to prefer younger employees. Courts have also held that where the employee earned substantial annual compensation, the ability to find comparable employment at the same rate of remuneration would be far more difficult and thus a longer notice period is appropriate. [citations omitted]

[66] Allied argues that eight months notice is reasonable in the circumstances. They further submit that comparison to past cases on the basis of notice per year of service is only a signpost; there is no formula. Allied also argues that the plaintiff's approach is to use an average of notice periods, which is inappropriate. The assessment of reasonable notice is on a case-by-case basis.

[67] Allied relies on *Hrynkiw v. Central City Brewers & Distillers Ltd.*, 2020 BCSC 1640 as the most reasonable comparator case. In that case, a 56-year-old employee in the role of CFO was terminated after 6.3 years. The court found 12 months notice was appropriate in the circumstances.

[68] Both *Kolaczynski* and *Hrynkiw* provide helpful benchmarks in this case. The Court in *Hrynkiw* approved a notice period of 12 months for 6.3 years service, which is similar, proportionately, to this case. *Hrynkiw* also involved an employee younger than Mr. Reid. Both decisions suggest a notice period of around 15 months and I accept the Plaintiff's submission that 15 months notice is reasonable in all the circumstances.

Condonation

[69] Allied argues that Mr. Reid accepted the notice as offered and cannot now resile from that position. Based on this alternative position, Allied says that even if eight months was unreasonable, Mr. Reid was bound by his acceptance of it. Arising from this argument, this Court must consider whether there is a limited period (other than statutory limitation periods) at common law within which an employee must object to the insufficient provision of notice.

[70] I must also consider whether Allied was required to plead accord and satisfaction to advance the defence that Mr. Reid accepted the notice given at the time of the termination letter.

[71] Allied's argument proceeds as follows:

- a) Inadequate notice may constitute repudiation of the employment agreement.

- b) If an employment contract has been repudiated, the innocent party has the right to treat the contract at an end and sue for damages.
- c) That party must make the decision about whether to object to the notice provided within a reasonable period of time. If they do not do so, their failure to take action can amount to condonation or acceptance of the new terms of the employment.
- d) Mr. Reid worked until April 3, 2023, when he gave notice of his position that he had been constructively dismissed.
- e) It is now too late for Mr. Reid to take issue with the sufficiency of notice because he continued to work under the premise of that eight months notice period for several months before taking any position on his dismissal and the sufficiency of notice.
- f) The reasonableness of the timing of Mr. Reid's objection to the amount of notice is informed by his senior position and previous experience with employment matters.

[72] Mr. Reid argues that Allied is asking the court to conclude that an employee must immediately elect to accept the repudiation and claim the notice is insufficient. To accept this proposition, Mr. Reid submits, would allow an employer to benefit from its repudiation. He submits that there is no public policy rationale for Allied's approach, and it would be inconsistent with the limitation period that otherwise exists in the law for a claim in wrongful dismissal.

[73] Mr. Reid further submits that Allied failed to plead the defence of accord and satisfaction and should not be allowed to rely on it now. In particular, he says that Allied's position that Mr. Reid consented to the amount of notice through his silence was not an indication of a meeting of two minds, as is required under that defence. Mr. Reid argues that Allied offered no evidence of its understanding there was any agreement by Mr. Reid, other than his silence and compliance with the obligation to work out the notice period.

[74] None of the case law relied upon by the parties addresses this situation expressly. The parties did not provide any authority involving the same factual matrix as this case, being:

- a) the employer terminates the employee;
- b) the termination provides a term of working notice;
- c) the employee starts to fulfil the working notice obligation;
- d) the employer changes the circumstances of the employment;
- e) the employee asserts constructive dismissal and ends the relationship part way through the notice period; and
- f) the employee sues for wrongful dismissal and inadequate provision of notice.

[75] Accordingly, this is something of a novel situation.

[76] Allied's position rests on case law, such as *Zaraweh*, that set out the following general principle:

[18] The law of wrongful dismissal is a manifestation of the law of contract, tempered by recognition of the important role of employment in the community and the practical aspects of contracts whereby personal service is provided. It follows that the usual rules on termination of contract apply, including the law relating to repudiation of contracts. The question is the implication of that law for this case of insufficient notice.

See also, *Restauronics Services Ltd. v. Nicolas*, 2004 BCCA 130 at para. 41.

[77] *Zaraweh* was referenced as the case closest in substance to the one before the court. In that case, the plaintiff commenced her action for wrongful dismissal during a working notice period, asserting the employer failed to provide reasonable notice. The Court of Appeal addressed the effect of the action being commenced during the working notice period and found that commencing the action amounted to repudiation of the contract of employment.

[78] The court then considered the effect of the insufficient notice under which Ms. Zaraweh had been working out her notice period. The court referred to *Hill v. C.A. Parsons & Co. Ltd.*, [1972] 1 Ch. 305, [1971] 3 All E.R. 1345 (C.A.), in which Lord Denning describes an inadequate notice of termination as repudiation of an employment contract. In *Zaraweh*, the Court found that a provision of inadequate notice breached the contract and gave the plaintiff employee a cause of action for damages although it did not constitute repudiation. The action in breach of contract was available to her because the employer's actions did not indicate intention of repudiation, and the extent of notice was not well defined for those in the employee's position so it was not an obvious breach carrying the brand of repudiation.

[79] Mr. Reid referred to another decision which follows *Zaraweh*, being *Giza v. Sechelt School Bus Service Ltd.*, 2012 BCCA 18. In *Giza*, the Court of Appeal affirmed that "although repudiation ends the ongoing rights and obligations of parties under a contract, it does not affect rights and obligations that have accrued": para. 41. In that case, the Court concluded that the appellant's right to damages in lieu of reasonable notice had accrued when he was given inadequate notice. Despite his repudiation, this did not take away his right to damages nor did it take away the right of his employer to his services during the notice period: *Giza* at para. 41. I take from this conclusion that an employee's cause of action founded in inadequate notice does not disappear because the employee has continued to work under the notice period.

[80] This does not mean there is no obligation to take steps within a reasonable time. In this case, I see the essential question being whether in all the circumstances, whether it was fair and reasonable for Mr. Reid to work under the notice period for several months without express objection, or whether this constitutes acceptance of the notice provided.

[81] In the circumstances, I find Mr. Reid's course of conduct was not unreasonable. He attempted to work out the notice period. That period, in my view, is a fair time in which an employee may have the opportunity to consider whether the

notice offered is in fact adequate. There was no evidence, other than that Mr. Reid had some experience with employment law issues, he was aware or was made aware that his working through the notice period could signify his assent to the adequacy of the length of that period. My conclusion does not turn on his knowledge of the law, but in this case, I find that it is not obvious under the law what the consequences of continuing to work out notice may be for an employee's right to assert that notice was unreasonable.

[82] My conclusion does turn on the relative fairness of the situation, and the imbalance of power as between employer and employee. Although there was tension in the relationship, and certainly goodwill appears to have eroded between the parties, Mr. Reid expressed his view that he had a professional and employment obligation to carry on through the notice period when required to do so by the termination notice by Allied. In the circumstances, it appears on the evidence that the responsibilities and conditions of Mr. Reid's work gradually changed over time, and on the cumulative basis of those changes, Mr. Reid then elected to give notice of his position that Allied had constructively dismissed him. I have not heard any evidence or persuasive argument that Mr. Reid expressly or impliedly agreed in words or conduct during any of that time with the reasonableness of the length of the notice period.

[83] Our courts have not, to this point, required an employee to object to the insufficient provision of notice prior to the exhaustion of that period (whether working or damages in lieu) or by a particular point in that period. I agree with the plaintiff that this is sensible because the employer, who has greater bargaining power, determines this notice period. It may be necessary for an employee to assess whether that notice period was in fact sufficient, and to make that assessment based on factors which include the difficulty they may have in securing replacement employment. There are limitation periods which dictate the outside limit for those claims, and those will apply. I do not see a principled reason in this case to impose an additional internal limitation on the time within which an employee must object to the notice period declared by the employer.

[84] Further, I find that in this case there is no prejudice to Allied as a result of raising the insufficiency of notice at a point midway through the notice period, at a point where the relationship had come to a point of collapse. Rather, I find the timing of Mr. Reid's objection to the adequacy of notice was reasonable in the circumstances and he is not foreclosed from raising it after working under that notice for some time.

[85] The parties did not argue that there should be a specific benchmark or timeline as defined in the law for an employee's response to a provided period of notice on termination. This is appropriate, particular in the case of working notice, where the relationship between employer and employee remains in place although on different footing. As with many aspects of the unique relationship at the heart of employment law, there must be a highly case by case assessment of whether the conduct of an employee facing dismissal constitutes acceptance of the notice provided: *Zaraweh* at para. 31. Here, in all the circumstances and given the evidentiary record, Allied has not persuaded me that Mr. Reid's determination it was appropriate to work out part of the notice period (until, in his view, he had been constructively dismissed) constituted accord with the amount of notice.

[86] The question of whether accord and satisfaction on the notice period was properly pleaded does not have to be determined here, as I have concluded there was no accord on the evidence, and I elect to address the issue on that basis rather than the adequacy of the pleadings.

[87] However, I would add that the dispute on this issue would have been properly crystallized had the defendant clearly pleaded accord and satisfaction. Mr. Reid made a general pleading that Allied failed to provide reasonable notice of termination and this constituted a further breach (in addition to the constructive dismissal) of the employment contract. The facts were pleaded in support of that allegation, including the contract, the time of service, and the amount of notice given. To raise the defence, the defendant could have pleaded that Mr. Reid had, through actions and/or words, condoned Allied's notice, and then pleaded relevant facts in

support of that assertion. This defence was not articulated though, and the facts were not stated on which that defence could stand. Accordingly, on an alternative basis, I would also conclude that the defence of accord and satisfaction was not properly pleaded by the defendant in this case.

Mitigation

[88] Allied argues that Mr. Reid has failed to mitigate his damages. To prove failure to mitigate, the defendant must show:

- 1) that the employee failed to take reasonable steps to mitigate their loss; and
- 2) that the employee would have been successful in reducing or avoiding loss if they had taken those steps: *Koski v. Terago Networks Inc.*, 2021 BCSC 117 at para. 22, citing *Smith v. Acker Kvaerner Canada Inc.*, 2005 BCSC 117 at para. 31.

[89] In response to Allied's plea that he failed to mitigate his damages, Mr. Reid submits that he took reasonable steps to mitigate his loss, and that Allied has led no evidence that he would have been successful in reducing or avoiding loss by taking any other reasonable steps.

[90] I am not persuaded that Mr. Reid failed to take sufficient action so as to mitigate his damages. Based on his evidence (detailed at para. 44 of these reasons) regarding his job search, including applying to positions he was both qualified and overqualified for, it appears Mr. Reid did take reasonable steps to mitigate his damages. Indeed, he testified as to his willingness to take a position with less responsibility as compared to his employment at Allied in order to make a return to the workforce. Moreover, I am cognizant of the law referenced above that states how challenging it is for older employees to find new work. It appears that was the case here, based on Mr. Reid's testimony. I would not conclude a failure to mitigate and accordingly would not adjust Mr. Reid's entitlement to damages for reasonable notice.

Constructive Dismissal

[91] Justice Chan recently set out the principles governing constructive dismissal in *Chowne v. Timesing Education Group Inc.*, 2025 BCSC 1196:

[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).

...

[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.

[Emphasis in original.]

[92] The court must determine whether the employer has breached the employment contract by unilaterally changing it. The court must first identify an express or implied contractual term that has been breached and then determine whether the breach is sufficiently serious to constitute constructive dismissal: *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10 at paras. 32–33.

[93] If there is an express or implied term in the contract giving the employer the authority to make the change or if the employee agrees to the change, the change will not be unilateral nor a breach of contract. Whether there was a unilateral change is an objective inquiry: *Parolin v. Cressey Construction Corporation*, 2025 BCSC 741 at para. 12; *Potter* at paras. 63, 164, 169, 171. The analysis is necessarily retrospective, requiring consideration of the cumulative effect of past conduct of the employer and whether those show an intention not to be bound by the employment contract: *Potter* at para. 33

[94] If a breach is established, the court must determine if a reasonable person in the same situation would have felt that the essential terms of the employment contract were substantially changed. A minor breach will not constitute a substantial change of an essential term and will not be constructive dismissal. See *Parolin* at para. 13; *Potter* at para. 42.

[95] Absent a formal agreement, the terms of an agreement will be implied from the circumstances. The goal of this interpretation exercise is to determine the intention of the parties at the time the agreement was made: *Eli Lilly & Co. v. Novopharm Ltd.*, [1998] 2 S.C.R. 129, 1998 CanLII 791 at para. 54.

[96] In considering the effect of a change in duties and responsibilities, the question is whether the responsibilities and duties have been so altered as to constitute a breach of a fundamental term. It may be implied in a contract that the employer will not make substantial changes in duties and status of an employee

such as to constitute a fundamental breach. *Orth v. MacDonald Dettwiler & Associates Ltd.*, [1986] B.C.J. No. 1144, 1986 CanLII 170 (B.C.C.A.) at paras. 31, 41.

[97] A reduction in duties may constitute a breach. This will depend on the facts of the case, the nature and seriousness of the breach, the intention of the parties and the surrounding circumstances. See *Meyers v. Chevron Canada Limited*, 2013 BCSC 420 at paras. 36–37, 39.

[98] Mr. Reid submits that his claim falls under the second branch of *Potter*, which provides that an employer may constructively dismiss an employee by committing a series of acts that cumulatively would lead a reasonable person to conclude the employer no longer intended to be bound by the contract. Mr. Reid says the gradual removal of his duties, culminating in his move to an inferior office, resulted in his constructive dismissal by April 3, 2023. Mr. Reid argues he did not condone the changes.

[99] Allied argues that Mr. Reid was not constructively dismissed in the midst of the notice period. Allied's position is essentially that the changes made to Mr. Reid's responsibilities were a reasonable part of the gradual transition of his duties to Mr. Bean.

[100] In this case, there is no real contest that duties were transitioned away from Mr. Reid. As I have found above, Mr. Reid and Allied characterize the course of events differently, but both parties gave evidence that supports the fact that Mr. Reid's scope and nature of work was significantly different by the time he concluded he had been constructively dismissed.

[101] There was an express representation made to Mr. Reid in his termination: he was to serve working notice but his job would not fundamentally change. In describing the working notice period in the way they did, Allied characterized expectations for Mr. Reid over the course of the transition. It did not promise that nothing would change in how those responsibilities were carried out, nor did it

suggest he would not be part of a transition of work to the incoming CFO. However, it did suggest his role would possess the same features and importance as it had until that time. The way Mr. Reid's duties were changed—whether expressly or sometimes impliedly—was inconsistent with that expectation. Instead of maintaining consistency, it rapidly degraded Mr. Reid's role until he was left feeling he had nothing to do and was of no use in the position he was told would not change.

[102] I add that this was particularly the case because Allied failed to communicate clearly about the transition plan during this process or provide explanations about the ways in which duties were being transferred. It does not mean there was no business case for how it was done; rather, it was inconsistent with the expectations that Allied itself had set. In the circumstances, I find that a reasonable person in the same situation would have felt the essential terms of the employment contract were substantially changed.

[103] Accordingly, I conclude that Allied's actions represent a series of acts that cumulatively would lead a reasonable person to conclude the employer no longer intended to be bound by the employment contract, and constituted constructive dismissal.

[104] Mr. Reid was transferred to an inferior office. Allied says there was a reason for this, having to do with Mr. Reid's alleged inappropriate conduct in the workplace. There was no evidence that Mr. Reid had been advised of that reason for the move, nor was any documentation of an incident calling for discipline or for intervention from human resources or management relied upon. In any event, I do not need to make any findings on whether there was another reason justifying the office move, because I would conclude that the plaintiff's constructive dismissal was effective regardless.

Aggravated Damages

[105] Mr. Reid claims aggravated damages for the manner in which he was terminated. The point at which the employment relationship terminates is the point at which an employee is vulnerable and most in need of protection. The law

encourages conduct that minimizes damage from dismissal and discourages the aggravation of a sensitive context for an employee: *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, 1997 CanLII 332 at para. 95.

[106] Aggravated damages are available where the employer breaches its duty of good faith and fair dealing in the manner of dismissal and the employee suffers compensable damages. The plaintiff must show that the employer's conduct in dealing with the dismissal of the employee, and the aftermath of the dismissal, were untruthful, misleading, unduly insensitive or in other ways abusive and disproportionately disruptive. It is Mr. Reid's burden to demonstrate that he has endured more than normal distress and hurt feelings, that he experienced serious and prolonged disruption that transcends ordinary emotional upset and distress. This must be more than the discomfort and disruption which often arise in the breakdown of an employment relationship. See *Zheng v. China Southern Airlines Company Limited*, 2023 BCSC 1763 at para. 70, citing *Hrynkiw* at paras. 190–193.

[107] Mr. Reid's evidence was slim on the claim for aggravated damages. On the first component—the conduct of the employer—the evidence did not disclose conduct that was particularly out of bounds. Allied did not normally give working notice, but Mr. Reid stated that the provision of working notice was respectful in his case. Indeed, it is open to an employer to provide notice in either working form or damages in lieu, assuming it is done in good faith and not abusively. I agree with the defendant that, while the dismissal could have been handled better, it was not unduly insensitive.

[108] On the second component—the impact of the conduct on the employee—Mr. Reid explained he suffered sleeplessness, depression and unhappiness. He attested he was ashamed and delayed informing his spouse about his termination. There is no doubt that it was a difficult time, and it was likely compounded by the tense working environment during the notice period, and by the difficulty Mr. Reid then faced in seeking new employment.

[109] The law does not demand that a plaintiff provide evidence of a diagnosed mental health condition or particular treatment of depression or anxiety resulting from the dismissal: see, e.g., *Krmpotic v. Thunder Bay Electronics Limited*, 2024 ONCA 332 at para. 34. I do not find that medical records were required here, and I believe Mr. Reid's testimony about his experience to be genuine. However, I do not find that his experience following the dismissal was one that transcended ordinary emotional upset at the end of a reasonably long period of employment, and indeed at the end of a long career. Accordingly, I do not find that Mr. Reid is entitled to aggravated and compensatory damages in the circumstances.

Counterclaim

[110] Allied bore the burden to show that Mr. Reid had been overpaid for his vacation, statutory holidays and professional membership fees. It was not the plaintiff's burden to reconcile the inconsistent evidence before the court, as the counterclaim is advanced by the defendant. I am unwilling to draw an adverse inference against the plaintiff, particularly when the defendant had the opportunity to ask him questions and put the allegation to him but did not do so. Allied's counterclaim for \$9,558.99 is founded on the proposition that Mr. Reid's records are falsified, and this was not made out on the evidence before me. I dismiss the counterclaim for overpayment of vacation pay.

[111] Allied's claim to overpayment of statutory holiday pay is founded on the proposition that Mr. Reid worked only three days per week. I have found Mr. Reid was a full-time employee, and accordingly this aspect of the counterclaim is also dismissed.

[112] Allied further claims that it overpaid Mr. Reid's professional dues as a CPA, given they only would benefit from his professional status until June 30, 2023, as based on their termination of his employment with eight months working notice. I find that Allied should pay Mr. Reid's professional fees on a pro rata basis up to the date of his anticipated departure, June 30, 2023. He was constructively dismissed before that time. I would not conclude that Allied was responsible for Mr. Reid's

professional dues during the additional notice period I have found. Accordingly, the damages to which Mr. Reid is entitled will be reduced by the amount representing his CPA fees from July to December 2023.

Conclusion

[113] Mr. Reid found substantial success in this case and will have his costs.

“E. Sigurdson J.”