IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Adrain v. Agricom International Inc.,* 2025 BCSC 1842

Date: 20250923
Docket: S07377
Registry: Abbotsford

Between:

Larraine Marie Adrain

Plaintiff

And

Agricom International Inc.

Defendant

Before: The Honourable Mr. Justice Brongers

Reasons for Judgment

Counsel for the Plaintiff:	M. Sheard
Counsel for the Defendant:	C. J. Overholt, K.C. G. Lo A. Ng, Articled Student
Place and Dates of Trial:	Abbotsford, B.C. August 26-28, 2025
Place and Date of Judgment:	Abbotsford, B.C. September 23, 2025

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OVERVIEW

[1] This is a wrongful dismissal claim. The plaintiff is Larraine Adrain. She was employed by the defendant, Agricom International Inc. ("Agricom").

[2] While employed, Ms. Adrain reported to Tyler Thorpe, Agricom's president, owner, and founder. Ms. Adrain and Mr. Thorpe worked together at Agricom for 30 years before her employment with the company came to an end a few months ago. The primary issue in this case is how to legally characterize this rupture.

[3] Ms. Adrain says she was wrongfully dismissed since Agricom gave her inadequate notice and did not have just cause to terminate her job. She says she should be awarded compensatory damages accordingly.

[4] Agricom disagrees. It says that Ms. Adrain's conduct while employed constituted just cause for her dismissal. In particular, she arranged for her lawyer to send two letters to Agricom demanding that she be given a severance payment of $200,000, and threatening litigation if the company did not comply. She then made good on her threat by filing the present court action. As a result, Agricom submits that Ms. Adrain's claim should be dismissed.

[5] Agricom also advances several alternative bases upon which it says that Ms. Adrain should recover less than what she has claimed in this proceeding. They include contractual repudiation, failure to mitigate, a lack of evidence to establish specific losses, and the possibility that she will find other employment in the future.

[6] In the particular context of this case, I find that Ms. Adrain's impugned conduct did not provide Agricom with just cause for her dismissal. I also find that the actual notice of employment termination she was given by Agricom was insufficient. However, the fact that she sued Agricom during her working notice period amounts to a repudiation of her employment contract. As such, Ms. Adrain's claim will be allowed, but her award for the damages she has proven will be adjusted to reflect this repudiation. There will also be a reduction to account for the chance that

Ms. Adrain will be employed again soon, but not in respect of the sufficiency of Ms. Adrain's mitigation efforts.

[7] The specific terms of the order I am issuing and my detailed reasons for doing so are set out below.

FACTUAL AND PROCEDURAL BACKGROUND

[8] Agricom is a private corporation that trades and exports agricultural commodities, namely pulses, grains, oilseeds, and other crops. It is wholly owned by a holding company whose only shareholders are Mr. Thorpe and his spouse. Mr. Thorpe is Agricom's president and sole director. Its office is in North Vancouver.

[9] Agricom was founded by Mr. Thorpe in 1995. He had previously worked as a grain trader for another company and wanted to start his own business. Ms. Adrain had also been working at this other company, and she agreed to join Mr. Thorpe at Agricom as an employee around the time of its inception.

[10] Ms. Adrain's job title at Agricom was "Merchandiser and Logistics Coordinator". She had a number of important administrative responsibilities, and it is evident that Mr. Thorpe relied on her heavily for Agricom's operations over the years.

[11] In 2019, Agricom had around six or seven employees. That year, Mr. Thorpe contemplated shutting down the company because business conditions had become challenging as a result of consolidations in the industry. Ultimately, Mr. Thorpe decided not to, hoping that Agricom could be profitable if expenses were significantly reduced. To that end, all of Agricom's employees were let go except for Ms. Adrain and Mr. Thorpe. Thereafter, Agricom continued operating with just the two of them.

[12] During his period of reflection in 2019, Mr. Thorpe had initially planned to terminate Ms. Adrain's employment as well. In February of that year, Agricom gave Ms. Adrain formal notice that her job would come to an end ten months later, on December 31, 2019. Ms. Adrain responded by indicating her willingness to help

Mr. Thorpe wind down the company, although she also asked that she be given an additional fourteen months' severance in lieu of notice. However, as noted, Mr. Thorpe reconsidered his original decision and Ms. Adrain was kept on.

[13] Specifically, in October 2019, Agricom made a formal written offer of "new employment" to Ms. Adrain. It provided for a one-year employment term from January 1, 2020 to December 31, 2020. It also provided that Ms. Adrain could perform her work duties remotely from home. Ms. Adrain accepted the offer.

[14] Subsequently, their agreement was effectively renewed every year going forward, although its duration was later adjusted to coincide with Agricom's fiscal year start and end dates (June 1 and May 31, respectively). The wording of the parties' annual contracts was essentially identical except for the salary amount, which was sometimes modified further to discussions between Ms. Adrain and Mr. Thorpe. As per the parties' last written employment contract, which was signed on August 16, 2024 and whose term ran from June 1, 2024 to May 31, 2025, Ms. Adrain's annual salary was $80,000.

[15] At this point, I note parenthetically that in spite of the existence of these written fixed term contracts, the parties are both of the view that Ms. Adrain's actual employment agreement must be deemed to be subject to an indefinite term because of their pattern of being regularly renewed.

[16] On April 8, 2025, Mr. Thorpe met with Ms. Adrain at a White Spot restaurant. He informed her that he was considering retirement and wanted to discuss the future of Agricom. In particular, Mr. Thorpe wondered if Ms. Adrain might like to take over the company's business. He said that if she was so interested, he would be willing to sell it to her for one dollar. If she was not, he planned to wind down the company's operations. At the end of their meeting, Ms. Adrain indicated that she would consider her options.

[17] On April 14, 2025, counsel for Ms. Adrain sent a letter to Agricom with the subject line: "Claims of Larraine Adrain". It made no mention of Mr. Thorpe's offer to

effectively give Agricom's business to Ms. Adrain. Instead, it stated that while Ms. Adrain was willing to continue working at Agricom while its operations were being shut down, she wanted to be provided with a $200,000 severance payment to reflect 24 months' worth of notice. The text of the letter to Agricom included the following words:

> [Ms. Adrain] is happy that your principal, Tyler Thorpe, has finally managed to solidify his retirement plan. However, she has worked long and hard for the company and if she is being asked to help with its final stages, she thinks the least you can do is commit to paying her lawful entitlements upon termination. As an employee of about thirty years' tenure, she is entitled to 24 months' notice of termination. Although you have yet to specify her end date, you have indicated that it will be well short of 24 months from now. And further, without that specific end date, you have provided her with no notice in the eyes of the law.
>
> You are asking [Ms. Adrain] to commit to a nebulous plan aimed at maximizing profit and convenience for the company. She asks in return that you please commit to paying her a gross lump sum of $200,000 less applicable withholdings in exchange.
>
> Your confirmation within seven days is appreciated.

[18] After no response was provided within the stated deadline, Ms. Adrain emailed Mr. Thorpe on April 25, 2025 to ask for an answer to her lawyer's letter.

[19] On April 29, 2025, Mr. Thorpe sent a letter to Ms. Adrain written on Agricom letterhead titled "Next Steps". It began with a reiteration of his April 8, 2025 offer to effectively transfer Agricom's business to Ms. Adrain "without compensation", if she would like to take it over. If not, however, Mr. Thorpe confirmed that he would be closing down the business. The letter also indicated that Ms. Adrain was being provided with 13 months' notice of employment termination, as follows:

> In respect of my decision to work towards the closing of the business of Agricom, I confirm my notice to you that your employment will continue until May 31, 2026 when it will terminate. Until that date, your responsibilities at Agricom will remain the same. Your current salary and benefits will continue until that date unless you decide to resign to accept other employment. We will be flexible about agreeing to you being absent from the office for job interviews. If you have any questions, please let us know. Thank you for your support.

[20] Ms. Adrain then answered Mr. Thorpe with a second lawyer's letter on May 5, 2025. That letter indicated that Ms. Adrain was willing to work for Agricom until May 31, 2026, but may reconsider if Mr. Thorpe did not address her legal claims to her satisfaction. It also intimated that Ms. Adrain was contemplating the possibility of litigation proceedings:

> To reiterate, in our last letter we asked you for a very simple commitment: to confirm that you would pay [Ms. Adrain] appropriately. You have now provided [Ms. Adrain] with approximately 13 months' notice. [Ms. Adrain] is entitled to significantly more than this. She asked you to agree, and you chose to ignore her, which is insulting and hurtful.
>
> A wrongful dismissal has three elements, all of which are currently present:
>
> - dismissal;
> - without cause; and
> - without reasonable notice.
>
> As such, she could sue you for her damages.
>
> …
>
> As of the date of this letter, [Ms. Adrain] remains willing to work through the newest in a series of end dates you have provided (May 31, 2026) in order to assist you in planning your retirement. But if you are unwilling to address her valid legal claims directly and honestly, her willingness may well change. …
>
> On the basis of what has transpired to date, if you will not confirm that you will pay [Ms. Adrain] the balance of her severance by 4:00 p.m May 12, 2025 she will be forced to conclude that you are unwilling to pay her lawful entitlements.
>
> [emphasis in original]

[21] Agricom did not answer the letter from Ms. Adrain's lawyer by the stated deadline. Ms. Adrain then commenced the present wrongful dismissal action by filing a notice of civil claim on May 14, 2025. Agricom was served with it on or around May 21, 2025.

[22] On June 17, 2025, Agricom filed its response to civil claim. Mr. Thorpe also arranged for a meeting with Ms. Adrain that day at a Tim Horton's restaurant. It was very brief. He handed her an envelope, said "Have a nice life", and left.

[23] The envelope contained a letter from Mr. Thorpe written on Agricom letterhead, dated June 17, 2025, which was titled "Repudiation of Employment". It

alleged that by sending lawyer demand letters and suing for wrongful dismissal, Ms. Adrain had repudiated her employment and engaged in conduct that constitutes just cause for dismissal. Mr. Thorpe wrote:

> I was shocked by the correspondence that I received from your legal counsel which included a demand that Agricom pay to you $200,000. I then received from your counsel a Notice of Civil Claim that you initiated in the Supreme Court of British Columbia against Agricom International Inc. ("Agricom") claiming damages for wrongful dismissal at a time when you continued to be employed by Agricom.
>
> In taking these actions through your counsel's correspondence and the filed Notice of Civil Claim, you have repudiated your employment with Agricom.
>
> After reflecting on this matter carefully, I have decided that Agricom will accept your repudiation of the terms of your employment effective immediately. I had every intention of satisfying my obligations to you as your employer through working notice and possibly a lump sum payment at the end of your employment if you were unsuccessful in obtaining alternative employment. In good faith, I also offered to transfer the business of Agricom to you without any financial commitment from you. You decided to decline that offer.
>
> By instructing your legal counsel to make a demand for $200,000 and then to initiate legal proceedings against Agricom when you continued to be employed, you destroyed the trust and confidence that are essential terms of your employment. The actions that you have taken also constitute just cause for your dismissal.

[24] As a result, Ms. Adrain's employment with Agricom was terminated effective June 17, 2025. However, as was also indicated in Mr. Thorpe's letter, Agricom undertook to continue paying Ms. Adrain's salary and benefits until September 19, 2025, on a without prejudice and *ex gratia* basis.

[25] This action proceeded as a fast track litigation matter. The trial took place over three days, from August 26 to 28, 2025. The only persons who testified were Ms. Adrain and Mr. Thorpe. Their respective testimonies did not have any material contradictions in respect of the relevant issues in dispute, and I had no credibility or reliability concerns with either witness. Further evidence was provided in the form of admissions, read-ins from the examination for discovery of Agricom's representative (Mr. Thorpe), and various documents that were entered by agreement.

THE PARTIES' POSITIONS

Ms. Adrain's Position

[26] Ms. Adrain submits that her employment was terminated without cause by Agricom. Given her length of service, age, and skill set, her reasonable notice entitlement is 24 months. Accordingly, she is also entitled to damages equal to her lost remuneration for that period.

[27] Ms. Adrain alleges that there are three components to this remuneration: (1) salary; (2) bonuses; and (3) reimbursement of her monthly cell phone expenses.

[28] With respect to salary, Ms. Adrain was being paid $80,000 per year prior to her termination. Ms. Adrain therefore claims $160,000 in damages for lost salary, being the equivalent of 24 months' wages.

[29] Ms. Adrain's employment contract also provided for discretionary bonuses. Ms. Adrain says she is entitled to all bonus payments she would have been paid during the 24-month notice period. She claims that this amount is $16,000, reflecting an alleged historical average bonus payment of $8,000 per year. In addition, Ms. Adrain claims a further $17,500 in respect of an accrued retroactive bonus she is allegedly owed in respect of Agricom's most recent fiscal year (i.e., June 1, 2024 to May 31, 2025) since the company's financial performance was particularly good.

[30] Finally, Ms. Adrain claims $2,400 in respect of her entitlement to be reimbursed for her cell phone expenses during the 24-month notice period.

[31] Ms. Adrain's damages claim is therefore as follows:

(a) Lost Salary: $160,000

(b) Lost Bonuses: $16,000

(c) Accrued Retroactive Bonus: $17,500

(d) Lost Cell Phone Expense Reimbursement: $2,400

TOTAL: $195,900

[32] Ms. Adrain denies that these amounts should be reduced because of a failure to mitigate, or that they be subject to a contingency reduction to reflect the possibility that she may find other employment in the future.

[33] She also denies that her impugned conduct of having sent lawyer demand letters and initiating litigation against Agricom amounts to just cause for dismissal, or a repudiation of her employment. However, if the Court were to find that Ms. Adrain's conduct would in principle have provided Agricom with just cause to dismiss her, Ms. Adrain submits that the doctrine of condonation applies. In particular, she says that Agricom's failure to terminate her employment sooner precludes Agricom from now advancing a just cause defence.

[34] On the other hand, Ms. Adrain acknowledges that the actual salary and benefit payments she received from Agricom following notice of her termination should be set off from her final damages award.

Agricom's Position

[35] Agricom's primary position is that Ms. Adrain's impugned conduct constitutes just cause for her dismissal. Agricom also denies that it condoned this conduct, arguing that the time taken to formalize termination of her employment was reasonable. As such, Ms. Adrain is not entitled to any award of damages for wrongful dismissal.

[36] In the alternative, Agricom submits that Ms. Adrain's impugned conduct amounts to a repudiation of her employment contract, which was accepted by Agricom effective June 17, 2025. If so, Ms. Adrain would be entitled to damages reflecting reasonable notice of termination of her employment, minus the amount of notice she would have worked through had she not repudiated her employment.

[37] In the event the Court finds that Ms. Adrain was dismissed without cause, Agricom concedes that, in principle, the appropriate reasonable notice period to be

used for the purpose of adjudicating this claim is 24 months. However, Agricom says that this period should be discounted because Ms. Adrain failed to mitigate her damages, and because a contingency reduction is appropriate in this case.

[38] In particular, Agricom submits that Ms. Adrain failed to avail herself of her employer's offer of assistance in finding new employment. It says that two months should be deducted from her total notice period to reflect this failure.

[39] In addition, Agricom notes that the trial of this matter took place only four months after Ms. Adrain was given written notice. It is unknown whether and when she might obtain other employment in the future which would reduce her actual losses. Accordingly, Agricom submits that a contingency reduction of between around 15% (i.e., 3.5 months) and 25% (i.e., 6 months) should also be applied to the notice period.

[40] Finally, Agricom denies that Ms. Adrain has met her burden to demonstrate that she would be entitled to any compensation for lost or accrued bonuses, noting that these were discretionary benefits that Agricom was not contractually required to pay. Agricom made no specific submissions regarding Ms. Adrain's claim in relation to reimbursements for her cell phone expenses.

ISSUES AND FRAMEWORK FOR ANALYSIS

[41] The first issue to be decided in this case is whether Ms. Adrain was dismissed from her employment without cause, as she argues, or whether Ms. Adrain's impugned conduct gave rise to just cause for her dismissal, as Agricom argues. Also, if the Court agrees with Agricom's position, consideration must be given to whether Agricom condoned Ms. Adrain's impugned conduct, thereby precluding it from asserting that there was just cause for her dismissal.

[42] This issue is potentially dispositive since if the Court accepts Agricom's assertions and finds that Ms. Adrain's employment was justly terminated for cause, Ms. Adrain's claim must be dismissed.

[43] However, if the Court does not find that there was just cause, the following issues will then have to be addressed:

1. Did Ms. Adrain's impugned conduct amount to repudiation of her employment contract?

2. What is the appropriate period of reasonable notice in this case, and was Ms. Adrain provided such notice by Agricom?

3. What is the quantum of wrongful dismissal damages to which Ms. Adrain is entitled for her loss of:

    a. salary;

    b. bonuses; and

    c. cell phone expense reimbursements?

4. Should Ms. Adrain's entitlement to damages be discounted to reflect a failure to mitigate her losses?

5. Should Ms. Adrain's entitlement to damages be discounted to reflect the contingency that she may find alternative employment in the future?

ANALYSIS

1. Just Cause

[44] The general principles that apply to determining whether an employer has just cause to dismiss an employee in British Columbia can be found in several jurisprudential authorities. A particularly helpful one is the decision of Justice Donegan (then of this Court) in *Eisler Estate v. GWR Resources Inc.,* 2019 BCSC 1990, at paras. 197–205. It distills these principles from a number of leading appellate and trial judgments, of which the most significant is the Supreme Court of Canada's decision in *McKinley v. BC Tel,* 2001 SCC 38. I further summarize the most relevant principles as follows:

(a) The employer bears the burden of establishing just cause for dismissing an employee. This onus is a heavy one (*Staley v. Squirrel Systems of Canada, Ltd.*, 2013 BCCA 201, at para. 19).

(b) Just cause is impugned conduct on the part of an employee that, when viewed in all the circumstances, is seriously incompatible with the employee's duties, conduct which goes to the root of the employment contract, and which fundamentally strikes at the employment relationship (*Van den Boogard v. Vancouver Pile Driving Ltd.*, 2014 BCCA 168, at para. 17).

(c) In determining the existence of just cause, the court must undertake a contextual analysis of all of the relevant facts and circumstances, including an examination of the category of impugned conduct and its possible consequences, the circumstances surrounding the impugned conduct, the nature of the employment contract, and the status of the employee (*McKinley*, at paras. 29–39 and 48–51).

(d) This contextual analysis must be done with the objective of determining whether the impugned conduct is such that it has led to a breakdown of the employment relationship or is otherwise irreconcilable with the continuation of that relationship (*George v. Cowichan Tribes*, 2015 BCSC 513, at para. 112).

(e) The test is an objective one, viewed through the lens of a reasonable employer and taking into account all of the relevant circumstances (*Roe v. British Columbia Ferry Services Ltd.*, 2015 BCCA 1, at para. 35).

(f) There must also be a consideration of proportionality in the sense of ensuring that an effective balance is struck between the severity of the employee's impugned conduct and the sanction imposed, one that recognizes the power imbalance engrained in most employment relationships whereby the employee is generally in a vulnerable position

> vis-à-vis their employer (*McKinley*, at paras. 53–57). As such, not all impugned conduct will amount to just cause for termination; it must be irreconcilable with maintenance of the employment relationship (*Smith v. Pacific Coast Terminals Co. Ltd.*, 2016 BCSC 1876, at para. 55, aff'd 2017 BCCA 197).

[45] In the case at bar, Ms. Adrain's impugned conduct is the fact that she arranged for her legal counsel to: (1) send two demand letters to Agricom (on April 14, 2025 and May 5, 2025); and (2) issue a notice of civil claim initiating a wrongful dismissal claim against Agricom (filed May 14, 2025 and served on or around May 21, 2025). Agricom submits that this conduct provided just cause for Ms. Adrain's dismissal since she engaged in it while she was still employed. That dismissal was effected by Agricom on June 17, 2025 when Mr. Thorpe handed Ms. Adrain his letter informing her of Agricom's position.

[46] I was not directed to any binding authorities that stand for the categorical proposition that an employer will have just cause to terminate an employment contract if an employee sends their employer legal demand letters and then sues the employer for wrongful dismissal while still working.

[47] That said, there are a number of decisions from the courts in our province containing statements to the effect that it may not be possible for parties who are engaged in litigation to maintain an employment relationship. The following are illustrative:

> A) *Zaraweh v. Hermon, Bunbury & Oke,* 2001 BCCA 524:
>
> > [21] On my view of the pleadings and the case law, I do not consider that [the trial judge's] view can hold, and I am of the view that the acts of issuing the writ and statement of claim and serving them upon the partnership were conduct incompatible with continuation of the contract of employment.
>
> B) *Zia v. Telus Communications Inc.,* 2006 BCSC 1925:
>
> > [40] I think it is arguable that, when an employee sues his or her employer alleging that the employer has committed a fundamental breach of the employment contract, then this is conduct which is incompatible with the continuance of the employment relationship, and provides just cause for

> dismissal. … This would generally be the result, even where the plaintiff does not resign before commencing legal proceedings, and expresses the intention to continue in his employment. But the authorities stop short of enunciating an absolute rule, and each case must be decided on its own facts.

C) *Zia v. Telus Communications Inc.,* 2007 BCSC 1426:

> [117] The commencement of legal proceedings by an employee against an employer may amount to conduct which is incompatible with continued employment and provide just cause for dismissal without notice … As set out in Mr. Zia's written submissions, the determination of this question requires a consideration of all of the circumstances.

D) *Carlsen v. Enerex Botanicals Ltd.,* 2012 BCSC 1309:

> [81] … The bringing of the Petition was conduct incompatible with Mr. Carlsen's duty of loyalty to his employer. It went to the root of the contract and fundamentally struck at the employment relationship. Having brought the Petition against Enerex, it was impossible for him to remain its president. In the circumstances, the Board, in light of the Petition, had just cause to dismiss Mr. Carlsen.

[48] However, it is apparent from a review of these authorities that these cases were decided contextually and that their outcomes were dependent on their unique facts. There is no bright line rule in this province to the effect that the commencement of litigation by an employee against their employer will always provide just cause for the employee's termination. The same can be said for when an employee engages and instructs a lawyer to send a demand letter to an employer asserting their entitlements under the applicable principles of employment law.

[49] I therefore must conduct my own contextual assessment, based on the evidence presented at trial, of whether Ms. Adrain's impugned conduct gave Agricom just cause to dismiss her on June 17, 2025. I must also consider notions of proportionality, being conscious of the extent of the power imbalance between the employer and employee, if any. My assessment must be done objectively, viewed through the lens of a reasonable employer and taking into account all of the relevant circumstances. Finally, I must be conscious that the burden is on Agricom, as the employer, to prove cause. It is not up to Ms. Adrain to prove the opposite.

[50] I will begin by considering the two demand letters sent by Ms. Adrain's lawyer to Agricom further to her instructions. Simply put, I do not find that either of these letters, whether read individually or collectively, can reasonably be viewed as communication that is incompatible with the existence of a continuing employment relationship. That is because, when viewed in context, a reasonable employer would understand that these letters were an invitation to engage in a negotiation of the terms under which the employee's employment contract would come to an end. Furthermore, I can see no valid reason why such a negotiation could not be pursued while the parties' employment relationship continued.

[51] The timing of these letters is important. They were sent by Ms. Adrain's lawyer following an unusual in-person meeting convened by Mr. Thorpe at a restaurant on April 8, 2025. At that meeting, Mr. Thorpe informed Ms. Adrain that he was contemplating retirement and no longer wished to operate Agricom's business. He then effectively gave Ms. Adrain two options: (1) to acquire the business for the nominal price of one dollar and take over its operations; or (2) accept that her employment would be terminated once the business was wound down.

[52] In these circumstances, I find that it was wholly understandable that Ms. Adrain would consult a lawyer and instruct that a demand letter be sent to Agricom to set out Ms. Adrain's legal position regarding her entitlements in relation to the proposed termination of her employment.

[53] These additional contextual factors are also relevant:

(a) Ms. Adrain had been a long-standing trusted employee of Agricom's for 30 years with no history of performance or discipline issues;

(b) Ms. Adrain's role at Agricom was largely administrative and not managerial;

(c) at the time the letters were sent, Ms. Adrain was Agricom's only employee other than its president, Mr. Thorpe, who was the sole directing mind of the corporation;

(d) there was a clear power imbalance between Ms. Adrain and Mr. Thorpe, as evidenced by his ability to set her salary and decide whether she would be paid discretionary bonuses;

(e) Ms. Adrain and Mr. Thorpe's working relationship involved limited direct in-person interaction, as she performed her work duties mostly from home while he was the one who mostly attended at the office;

(f) Ms. Adrain had some difficulties communicating directly with Mr. Thorpe when he first considered shutting down Agricom's operations in 2019, thereby further explaining her choice to this time communicate with Agricom through a lawyer to respond to Mr. Thorpe's 2025 announcement that he was contemplating such an action once again;

(g) at their April 8, 2025 meeting, Mr. Thorpe's explanation of his plan for closing down Agricom's business if Ms. Adrain was not interested in taking it over was ambiguous and unclear, particularly in relation to what compensation Agricom was prepared to provide Ms. Adrain for terminating her employment;

(h) the letters from Ms. Adrain's counsel indicated Ms. Adrain's willingness to continue working at Agricom while the business is being wound down; and

(i) the tone and content of these letters, while direct and business-like, were not impolite or overly aggressive.

[54] In my view, it was not objectively reasonable for Mr. Thorpe and Agricom to be "shocked" by the letters sent by Ms. Adrain's counsel given all of the surrounding circumstances. I also do not find it reasonable for Agricom to treat Ms. Adrain's choice to use a lawyer to negotiate her legal entitlements with her employer as conduct incompatible with a continuing employment relationship while those negotiations were ongoing.

[55] My findings are the same with respect to Ms. Adrain's filing of a notice of civil claim commencing a wrongful dismissal action against Agricom. It was issued after the only response Agricom provided to the letters from Ms. Adrain's counsel was a formal notice of termination whose terms did not indicate any willingness to negotiate or otherwise discuss Ms. Adrain's demands for compensation. Furthermore, the pleading itself is brief and relatively straightforward. It also does not contain any scandalous or inflammatory allegations.

[56] In these circumstances, I find it to have been reasonable for Ms. Adrain to have filed the notice of civil claim, and unreasonable for Mr. Thorpe, as the directing mind of Agricom, to treat the commencement of this litigation as incompatible with continuing his company's employment relationship with her. This is particularly the case when Ms. Adrain always indicated a willingness to continue working at Agricom with Mr. Thorpe while the business was being wound down, and because their respective jobs did not require them to work in close quarters with one another. It should also be noted that, as of the termination date (June 17, 2025), the litigation was still in its preliminary pleadings stage and it had yet to become clear that this matter would require a trial for its resolution.

[57] I make these findings while being cognizant that there is jurisprudential commentary to the effect that commencing litigation against an employer can constitute just cause for dismissal. However, as observed above, such a conclusion is not inevitable given the contextual, objective, and proportional analysis of whether impugned conduct amounts to just cause mandated by the Supreme Court of Canada in *McKinley.*

[58] In sum, I conclude that Agricom did not have just cause to terminate Ms. Adrain's employment when it did so on June 17, 2025.

2. Condonation

[59] In light of my rejection of Agricom's just cause argument, there is no need to answer the question of whether Agricom condoned Ms. Adrain's impugned conduct

by not acting more swiftly to terminate her employment. That question is hypothetical and I decline to address it.

3. Repudiation

[60] I turn now to Agricom's alternative position, namely, that Ms. Adrain's impugned conduct constituted a repudiation of her employment with Agricom, even if it may not have amounted to just cause for her dismissal. Specifically, Agricom argues that by sending it the two lawyer demand letters and then commencing a wrongful dismissal claim, Ms. Adrain repudiated her contract of employment. Agricom then accepted that repudiation effective June 17, 2025 when Mr. Thorpe hand delivered to Ms. Adrain his letter titled "Repudiation of Employment".

[61] Unlike the question of whether the act of suing an employer constitutes just cause for dismissing an employee, there is clear appellate authority in this province regarding whether such conduct constitutes contractual repudiation by the employee, namely: (1) *Suleman v. British Columbia Research Council,* 52 B.C.L.R. (2d) 138 (B.C.C.A.), (1990) CanLII 746 (B.C.C.A.); (2) *Zaraweh v. Hermon, Bunbury & Oke,* 2001 BCCA 524; and (3) *Giza v. Sechelt School Bus Service Ltd.,* 2012 BCCA 18.

[62] In all three cases, it was held that an employee who commences a wrongful dismissal action against an employer after receiving a notice of termination of employment without cause during the working notice period thereby commits an unjustified repudiation of the employment contract. However, there is an exception to this rule. It does not apply if the employee can demonstrate that the employer had already constructively dismissed the employee or repudiated the employment contract first.

[63] The following passages from this jurisprudence are instructive:

> A) *Suleman v. British Columbia Research Council*, 52 B.C.L.R. (2d) 138 (BCCA), (1990) CanLII 746 (BCCA):
>
> [8] The trial judge was of the view that neither the commencement of the action nor the pleadings required him to conclude that Mrs. Suleman must be

taken to have resigned. I have difficulty in understanding that view. It seems to me that the commencement of the action was either an acceptance by Mrs. Suleman of a constructive dismissal, if she could establish that result, or a repudiation by her of her contract of employment, if she failed to establish that result.

…

[15] In other words the contract of employment is not terminated until the end of the notice period and during that period the employer has the right to the services of the employee. It follows that the employee must remain ready and willing to carry out the contract of service. …

[16] Unless, therefore, Mrs. Suleman is able to establish a case of constructive dismissal the issue of the Writ of Summons on October 22, 1986 was premature and amounted to a repudiation of her contract of employment.

…

[26] For these reasons, I am of the opinion that Mrs. Suleman has not made out a case of constructive dismissal. On the other hand B.C. Research has made out its case of a repudiation by Mrs. Suleman of her contract of employment by the position she took in her statement of claim.

B) *Zaraweh v. Hermon, Bunbury & Oke*, 2001 BCCA 524:

[21] … Absent a prior repudiation by the partnership which would allow Ms. Zaraweh to elect to end the contract, or which alternatively could be viewed as justifying her termination of the contract, such actions must be viewed as unjustified repudiation by Ms. Zaraweh. This result is consistent with the decision of our Court in *Suleman v. B.C. Research Council* (1990), 1990 CanLII 746 (BC CA), 52 B.C.L.R. (2d) 138 in which this Court held that commencement of the action amounted to repudiation of the contract of employment.

[22] In reaching this conclusion I refer only to the facts of this case which were issuance of a writ of summons and statement of claim seeking general and punitive damages, some time before the end of the working notice. It may be that not all actions by an employee against an employer are of the same nature. For example, an action for a declaration as to a contract's continuance, or for an injunction, such as in *Hill v. C.A. Parsons & Co. Ltd.,* [1972] 1 Ch. 305, [1971] 3 All E.R. 1345 (C.A.), may have a character compatible with performance, not breach, of a contractual obligation. But such is not the case here.

C) *Giza v. Sechelt School Bus Service Ltd.,* 2012 BCCA 18:

[27] This Court in *Zaraweh v. Hermon, Bunbury & Oke* made it clear that an employee terminated with notice is required to work during the notice period (para. 14.). Saunders J.A. referred to this Court’s decision in *Suleman v. British Columbia Research Council* (1990), 1990 CanLII 746 (BC CA), 52 B.C.L.R. (2d) 138, 24 A.C.W.S. (3d) 508, in which Mr. Justice Hutcheon observed at p. 141 that, subject to conduct by the employer amounting to constructive dismissal,

> ... the contract of employment is not terminated until the end of the notice period and during that period the employer has the right to the services of the employee. It follows that the employee must remain ready and willing to carry out the contract of service.

[28] Whether the employer's conduct amounts to constructive dismissal is a question of fact. In *Zaraweh,* Saunders J.A. observed at para. 31 that:

> Provision of inadequate notice may constitute repudiation of the contract. Whether it does or not is a question of fact, to be resolved on the evidence of the circumstances accompanying the provision of the notice.

[64] I am bound by these appellate authorities. As such, I am compelled to conclude that Ms. Adrain's choice to file and serve a wrongful dismissal claim on her employer Agricom while the working notice period was still in effect amounts to a repudiation of her employment agreement, which was accepted by Agricom on June 17, 2025.

[65] Furthermore, Ms. Adrain has not pleaded or otherwise argued that she was constructively dismissed, or that Agricom somehow repudiated their employment agreement first. Even if she had advanced such arguments, they are not supported by the evidence. In particular, I find that by giving Ms. Adrain formal notice on April 29, 2025 that her employment would terminate at the end of company's next fiscal year on May 31, 2026, Agricom was attempting to act in a manner consistent with the terms of the parties' written employment agreements that they had been signing annually since 2019. Such conduct is not constructive dismissal or repudiation by the employer, even if the period of notice given is ultimately found to be inadequate: *Zaraweh* at para. 34. As such, the above noted "exception" to the principle that suing one's employer during a working notice period amounts to repudiation of the employment agreement by the employee does not apply.

[66] Importantly, however, my conclusion that Ms. Adrain's act of suing Agricom amounts to repudiation does not necessarily leave her without a remedy.

[67] In both *Zaraweh* and *Giza,* it was noted by our Court of Appeal that while repudiation ends the ongoing rights and obligations of parties under a contract, it

does not affect rights and obligations that have accrued. Paragraphs 35 and 36 of *Zaraweh* explain this principle in these words:

> [35] This leads to the question of Ms. Zaraweh's remedy, if any, for the inadequate notice. It is my opinion that the breach of contract by provision of inadequate notice gave Ms. Zaraweh a cause of action for damages although it did not constitute repudiation: see for example, *Elderfield v. Aetna Life Insurance Co. of Canada, supra.* This entitlement to sue did not die with Ms. Zaraweh's repudiation of the employment relationship.
>
> [36] It follows, in my view, that Ms. Zaraweh was entitled to the damages based on the difference between the notice provided, July 31, 1999, and the period of reasonable notice, ten months. That is, in my view, the correct measure of the loss that Ms. Zaraweh suffered by the partnership's failure to meet its contractual obligation.

[68] Paragraph 41 of *Giza* is to a similar effect:

> [41] In *Hadcock v. Georgia Pacific Securities Corp*., 2006 BCCA 536, 64 B.C.L.R. (4th) 308 at para. 48 this Court, relying on the Supreme Court of Canada's decision in *Guarantee Co. of North America v. Garden Capital Corp.*, 1999 CanLII 664 (SCC), [1999] 3 S.C.R. 423, explained that although repudiation ends the ongoing rights and obligations of parties under a contract, it does not affect rights and obligations that have accrued. In the present case, the appellant's right to damages in lieu of reasonable notice had accrued when he was given inadequate notice. His repudiation did not take away that right and it did not take away the right of the respondent to the appellant's services during the period of notice given.

[69] In other words, if the Court finds that Agricom provided Ms. Adrain with inadequate notice prior to her repudiation, she will be entitled to an award of damages accordingly. That said, such an award must be adjusted to reflect the notice period Ms. Adrain would have worked through had she not repudiated her employment. The specifics of this calculation will be discussed below.

4. Reasonable Notice

[70] In her very recent judgment in *Reid v. Allied Plumbing Heating & Air Conditioning Ltd.,* 2025 BCSC 1679, Justice Sigurdson summarized the legal concept of reasonable notice in employment law as follows:

> [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 *Machtinger 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.

[71] As I have found that Ms. Adrain was dismissed without cause by Agricom, I must now determine the duration of the reasonable notice period she was entitled to.

[72] Ms. Adrain's position is that reasonable notice in her case is 24 months. She cites four decisions of this court in which employees of a similar age (55 years old), duration of service (30 years), and position (office administration) were awarded 24 months' notice after being wrongfully dismissed: (1) *Silva v. Kensington Community Centre Association*, 2025 BCSC 1563; (2) *Valle Torres v. Vancouver Native Health Society,* 2019 BCSC 523; (3) *Stroppa v. Globe Foundry Ltd.,* 2005 BCSC 312; and (4) *Moody v. Telus Communications Inc.,* 2003 BCSC 979.

[73] Agricom concedes that 24 months is the appropriate period of reasonable notice for Ms. Adrain if the Court finds that she was dismissed without cause, as is the case here.

[74] I agree with Agricom's reasonable concession and find that Ms. Adrain was entitled to 24 months' notice. In its letter of April 29, 2025, Agricom only provided Ms. Adrain with 13 months' notice. This was insufficient. As such, I also find that Ms. Adrain was wrongfully dismissed by Agricom.

[75] Ms. Adrain is therefore entitled in principle to compensatory damages for wrongful dismissal.

5. Wrongful Dismissal Damages

[76] Ms. Adrain claims wrongful dismissal damages in respect of three aspects of her remuneration that she alleges she was entitled to under the terms of her employment contract with Agricom: (1) salary; (2) bonuses; and (3) cell phone expense reimbursements. I will consider each aspect in turn, after which I will address Agricom's arguments that Ms. Adrain's damages should be reduced because of mitigation and contingency reduction concerns.

[77] Before doing so, however, I will determine the starting point for the assessment of the quantum of Ms. Adrain's damages.

[78] As has already been noted, Ms. Adrain was entitled to 24 months' reasonable notice when she was informed by Agricom on April 29, 2025 that her employment was going to be terminated. Instead, Ms. Adrain was in fact provided with 13 months' notice on that day. Ms. Adrain then worked through one-and-a-half (1.5) months of that notice period, from April 29, 2025 until June 17, 2025 (the date on which her repudiation of her employment was accepted by Agricom). This means that Ms. Adrain effectively failed to work through 11.5 months of her actual 13-month notice period, and she is not entitled to be compensated in respect thereof. Accordingly, this 11.5 month period will be deducted from her reasonable notice period of 24 months.

[79] In sum, the starting point for calculating Ms. Adrain's entitlement for wrongful dismissal damages is a period of 12.5 months (24 months minus 11.5 months).

a. Salary

[80] There is no dispute that Ms. Adrain's annual salary at the time of termination was $80,000. This equates to a monthly salary of $6,666.67.

[81] Her wrongful dismissal damages will therefore be calculated on the basis that she will be awarded $6,666.67 in respect of lost salary for every month's worth of notice period for which she is entitled to compensation.

b. Bonuses

[82] A clear summary of the principles that apply to determining whether a wrongfully dismissed employee should receive compensation in respect of bonuses can be found in Justice Watchuk's reasons for judgment in *Nicholls v. Columbia Taping Tools Ltd.,* 2013 BCSC 2201 at paras. 266–269. I restate and paraphrase what I view as the salient portions of this summary as follows:

(a) An employee who has been wrongfully dismissed is entitled to what they would have received had they remained in the employ of the employer during the notice period, including bonuses.

(b) Whether damages will be awarded for bonuses payable during the notice period depends on whether there is a contractual right to the bonus. Where the bonus at issue is discretionary, in that payment depends on the performance of the employer and/or the employee, a dismissed employee will not be entitled to a bonus payment.

(c) The employee bears the burden to show both: (1) that they would have been entitled to a bonus if they had worked during the notice period; and (2) the basis for assessing the amount of such bonus.

(d) Factors to be considered in deciding whether a bonus was an integral part of the employee's compensation and thereby warranting compensation may include the following:

a. that a bonus is received each year although in different amounts;

b. bonuses are required to remain competitive with other employers;

c. bonuses were historically awarded and the employer had never exercised their discretion against the employee; and

d. the bonus constituted a significant component of the employee's overall compensation.

[83] The parties' August 15, 2024 employment agreement provides that Ms. Adrain is eligible for a discretionary bonus in these terms:

> 8. [Ms. Adrain] will be eligible to receive a discretionary bonus of up to 10% of Agricom's annual Net Profit as calculated from June 1, 2024 to May 31, 2025. (the "Bonus"). The Bonus is contingent on the completion of the terms of this Agreement to the Termination Date. The Bonus will be determined after the Termination Date and paid within 90 days after the Termination Date.

[84] Identical language was used to describe the extent to which Ms. Adrain may be entitled to a bonus in the parties' prior written contracts, except for the calculation dates, of course.

[85] In her testimony, Ms. Adrain acknowledged that her entitlement to a bonus was at the discretion of her employer and that it was up to Mr. Thorpe to exercise his judgment on whether she was entitled to a bonus in any given year. Ms. Adrain also acknowledged that while in some years she would receive a bonus, in other years she would not.

[86] As for Mr. Thorpe, his testimony confirmed that while Ms. Adrain was eligible to receive a bonus, he would decide whether one would be paid and in what amount. Mr. Thorpe testified to the effect that if the company were to have a "good year", a bonus would be paid to Ms. Adrain, although no specific formula was used for its precise calculation. Mr. Thorpe also confirmed that there were years in which Ms. Adrain did not receive any bonus at all.

[87] Based on the testimony of Ms. Adrain and Mr. Thorpe, Agricom's response to Ms. Adrain's notice to admit, and the documentary evidence, I find that Ms. Adrain was paid bonuses in the following amounts for the years 2019 to 2024:

2019: No bonus

2020: No bonus

2021: $10,000 bonus

2022: $16,000 bonus

2023: $5,000 bonus

2024: No bonus

[88] On my assessment of all of the evidence presented, I am not satisfied that Ms. Adrain has met her burden to establish that she would have been entitled to a bonus had she worked during the notice period, or that she is owed any retroactive bonuses. In particular, I find that under the contractual terms of her employment agreement, Ms. Adrain was eligible for a bonus of up to 10% of Agricom's annual net profit, but whether she would actually be paid a bonus and its amount was within the entire discretion of Agricom. Furthermore, this discretion was sometimes exercised "against" Ms. Adrain in the sense that no bonus was paid to her in some years. Finally, the evidence does not demonstrate that bonuses were such an integral part of her compensation that Ms. Adrain should be awarded damages for this wholly discretionary aspect of her compensation package.

[89] In sum, there will be no damage award in respect of bonuses allegedly owed by Agricom to Ms. Adrain, either prospectively or retrospectively.

c. Cell Phone Expense Reimbursements

[90] Counsel for Ms. Adrain submitted that his client should be awarded "$2,400 representing two years' cell phone coverage replacement". Counsel for Agricom's

submissions were silent on this issue. This silence notwithstanding, Ms. Adrain still bears the burden to prove such damages.

[91] The parties' August 15, 2024 employment agreement provides that "Agricom will pay for or reimburse [Ms. Adrain] for the cost of [Ms. Adrain's] monthly cell phone bill during the term of this agreement". In addition, further to a notice to admit, Agricom admitted that it paid for Ms. Adrain's cell phone bill "throughout her employment in the calendar year 2025".

[92] The only other evidence led on this issue was provided by Ms. Adrain through her testimony. During her examination in chief, she testified that Agricom paid her cell phone bill in the amount of $84 per month. She was not cross-examined on this point.

[93] Accordingly, I find that Ms. Adrain has proven on a balance of probabilities that she is entitled to damages of $84 in respect of lost cell phone expense reimbursements for every month's worth of notice period for which she is entitled to compensation.

d. Mitigation

[94] The *Reid* decision mentioned previously also contains a succinct summary of the doctrine of mitigation as it applies in wrongful dismissal cases, as follows:

> [88] … 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.

[95] At trial, Ms. Adrain provided testimony and a document regarding the efforts she has made to find new employment since her termination. They include updating her résumé, writing cover letters, searching for and applying to job postings, and contacting career counsellors. Despite her efforts, she has yet to receive an offer of employment. Ms. Adrain is nevertheless continuing her search and remains hopeful,

although she candidly acknowledges that it will be challenging given her age and the fact that she spent almost the entirety of her career working for one company.

[96] Evidence of these efforts notwithstanding, Agricom urges the Court to find that Ms. Adrain has failed to mitigate her losses because she did not request Mr. Thorpe's assistance in finding new employment. However, no persuasive evidence was led to show that if she had sought such assistance and Mr. Thorpe had provided it, Ms. Adrain would likely have been successful in obtaining work.

[97] Keeping in mind that the burden is on the employer, I am not satisfied that Agricom has proven that Ms. Adrain failed to mitigate her damages following her wrongful dismissal. Accordingly, there will be no reduction to Ms. Adrain's entitlement to damages in relation to her mitigation efforts, which I find to be reasonable in the circumstances.

e. Contingency Reduction

[98] As has been noted, Ms. Adrain's claim was heard in late August 2025, just four months after she was given notice of termination of her employment by Agricom on April 29, 2025. Given my determination that the starting point for calculating Ms. Adrain's entitlement for wrongful dismissal damages is a notice period of 12.5 months, I must now consider whether a contingency reduction should be applied.

[99] Agricom submits that such a reduction would be appropriate since it is possible that Ms. Adrain will find alternate employment prior to the conclusion of the notice period for which she will receive compensation (i.e., before mid-May 2026, 12.5 months from when she was given her original notice), thereby resulting in a windfall for her. Agricom suggests that this reduction be set at between 15% to 25% of the notice period. Ms. Adrain opposes any such reduction on the basis that it is also possible that she will not obtain any employment within this period, and therefore imposing a contingency reduction would result in her being undercompensated.

[100] This conundrum was explained by Justice Gray in *Luchuk v. Starbucks Coffee Canada Inc.,* 2016 BCSC 830, at para 46:

> [46] Wrongful dismissal cases are awkward, because the claim arises when the individual has been dismissed without reasonable notice, and then there is a bit of a race. Naturally the person who was dismissed would prefer to have an award from the Court and then afterwards get a job, because they would have a windfall, in the sense of receiving income from two sources representing the same time period. Naturally the defense would prefer that the plaintiff had found a job before the court hearing, because if the plaintiff has replaced the employment with another job, then he or she will not have suffered the loss of their entire employment income for the notice period. This tension is always present in wrongful dismissal cases, and it is something that the Court has to be mindful of.

[101] In *Luchuk,* the plaintiff was found to be entitled in principle to an 18-month notice period. This was reduced by one month to account for the contingency that he might find employment during that period. A similar reduction was effected by Justice Chan in *Cadrin v. Dunsmuir Holdings (New Westminster) Ltd.,* 2023 BCSC 130, at para. 36, as follows:

> [36] The defendant argues as the notice period goes beyond the trial date, a contingency reduction ought to be applied, as it is likely the plaintiff will find another job within the notice period. I have determined that an appropriate reduction in this case is a further one month. While there are similar jobs in customer service and retail available for which the plaintiff's skills may be transferable, in my view, taking into her account her age and lack of computer savvy, she will face some difficulties in competing against younger candidates. This leaves an award of 17 months notice.

[102] Another example of a case in which a one-month contingency reduction was applied is *Matusiak v. IBM Canada Ltd.,* 2012 BCSC 1784, where Justice Silverman reduced a 14-month notice period to 13 months.

[103] However, in *Corey v. Kruger Products L.P.*, 2018 BCSC 1510, Justice Gomery (then of this Court) refused to apply a contingency reduction because the reasonable notice period in that case was only eight months, relatively shorter than the periods at issue in the decisions that were cited to him in which contingency reductions were made:

> [65] These cases all involved relatively long notice periods. The longer the unexpired part of the notice period remaining at trial, the higher the probability

> that the plaintiff, exercising reasonable diligence, will obtain alternate employment, and the stronger the case for a contingency. In this case, the case for a contingency is correspondingly weaker and I do not think one is justified. My conclusion would probably be different if I had found a notice period of 12 months, as sought by Mr. Corey.

[104] Ultimately, I agree with Agricom that this is an appropriate case for a contingency reduction. While I accept that Ms. Adrain may face some age-related challenges in finding a job, she has a strong employment record as an office administrator and her credentials include a designation as a Certified International Trade Professional. As was done in *Luchuk, Cadrin,* and *Matusiak,* the quantum of that reduction will be one month.

f. Conclusion: Total Damages Awarded

[105] I find that Ms. Adrain has proven an entitlement to wrongful dismissal damages to compensate her for the loss of her salary and cell phone expense reimbursements in respect of a notice period of 11.5 months (12.5 months minus a one-month contingency reduction).

[106] However, it was acknowledged at the hearing by counsel for the parties that Ms. Adrain had in fact been receiving her salary and benefits since the date she was first given a termination notice on April 29, 2025. These payments have continued, even following the actual conclusion of Ms. Adrain's employment on June 17, 2025. This was done further to Mr. Thorpe's June 17, 2025 letter whereby Agricom undertook, on an *ex gratia* and without prejudice basis, to pay Ms. Adrain until September 19, 2025. Agricom also assured the Court through its counsel that it would continue to comply with this undertaking going forward.

[107] I therefore find that Ms. Adrain has been paid since she was given notice of her termination on April 29, 2025 right up until September 19, 2025, a period of approximately 4.5 months. As such, these payments must be set off from the final damages award. This will be done by calculating Ms. Adrain's total damages award on the basis that she is entitled to 7 months' (11.5 months minus 4.5 months) worth of compensation for her lost salary and benefits, as follows:

Salary: $6,666.67/month X 7 months = $46,666.70

Cell Phone Expense Reimbursements: $84/month X 7 months = $588.00

TOTAL: $47,254.70

DISPOSITION

[108] Ms. Adrain's wrongful dismissal claim against Agricom is allowed.

[109] Agricom is ordered to pay Ms. Adrain damages in the amount of $47,254.70, plus applicable interest under the *Court Order Interest Act,* R.S.B.C. 1996, c. 79.

[110] At the hearing, counsel for the parties requested an opportunity to make submissions with respect to costs following judgment. After reviewing these reasons, if the parties are unable to agree to the terms of a costs order, they are at liberty to contact Trial Scheduling to schedule a hearing on the matter provided they do so within 30 days of this judgment.

"Brongers J."