

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Plank v. Hapnin Enterprises Ltd.*,  
2025 BCSC 790

Date: 20250428  
Docket: S133464  
Registry: Kelowna

Between:

**Nancy-Ann Plank**

Plaintiff

And:

**Hapnin Enterprises Ltd.**

Defendant

Before: The Honourable Mr. Justice Funt

## **Supplemental Reasons for Judgment**

Counsel for the Plaintiff:

A.D. Mardiros

Counsel for the Defendant:

P. Tiwari

Written Submissions of the Defendant  
Received:

January 24, 2025

Written Submissions of the Plaintiff  
Received:

January 30, 2025

Place and Date of Judgment:

Kelowna, B.C.  
April 28, 2025

**1.0 Introduction**

[1] In this action, the plaintiff claimed damages for being wrongfully dismissed from her employment by the defendant.

[2] The trial judge, now retired, found in favour of the plaintiff. The plaintiff had sought damages based on 24 months as the appropriate notice period. The trial judge found 18 months to be the appropriate notice period: *Plank v. Hapnin Enterprises Ltd.*, 2024 BCSC 1949.

[3] After the plaintiff’s termination of employment, on or about November 9, 2021, the plaintiff was able to mitigate her damages by finding other employment by January 2022.

[4] In calculating damages, the trial judge stated in his reasons (at para. 195):

In my view, 18 months’ notice is appropriate. Using the plaintiff’s template for calculating the loss, the result is an award of \$13,309.42. For clarity, this is 18/24ths of all of the components of the plaintiff’s loss calculation except the deduction of \$960 for the graduated return to work. The mitigation component is not altered. The calculation is as follows:

	<b><u>Plaintiff’s Calculations</u></b>	<b><u>Award at 18/24ths</u></b>
80 hours per pay period x 52 pay periods (24 months x \$24 per hour):	\$99,840.00	\$74,880.00
(less 40 hours for graduated return until November 30, 2021):	(\$960.00)	(\$960.00)
Additional 2 week paid holiday time at Hapnin (24 months):	\$3,840.00	\$2,880.00
Plus difference in holiday pay (6% at Hapnin, 4% at North Nakusp) of 2%:	<u>\$1,996.80</u>	<u>\$1,497.60</u>
Subtotal:	\$104,716.80	\$78,297.60
Minus mitigation of: 2022 T4 North Nakusp:	\$31,026.98	\$31,026.98
Minus mitigation of: 2023 T4 North Nakusp (minus Dec):	<u>\$33,961.20</u>	<u>\$33,961.20</u>
Total mitigation:	\$64,988.18	
Total wage loss:	\$39,728.62	<b><u>\$13,309.42</u></b>

[5] The foregoing calculation reflects a corrigendum involving a minor arithmetic error.

[6] The controversy before me is whether the \$33,961.20 currently shown as deducted should be adjusted. Having regard to an 18-month notice period, the plaintiff says that the \$33,961.20 should be reduced. The plaintiff notes that the \$33,961.20 includes the plaintiff's earnings for the last six months of a 24-month notice period which is not consistent with the 18-month notice period the trial judge determined.

[7] For the reasons that follow, I agree with the plaintiff's submission. The inclusion of the plaintiff's earnings beyond the 18-month notice period in deducting the plaintiff's award for the found 18-month notice period would be patently unjust. It is a manifest error that should be corrected at this time.

## **2.0 Analysis**

[8] Rule 13-1(17) of the Rules of Court provides:

(17) *Correction of orders* – The court may at any time correct a clerical mistake in an order or an error arising in an order from an accidental slip or omission, or may amend an order to provide for any matter that should have been but was not adjudicated on.

[9] The Court also has inherent jurisdiction to correct the error. In *Buschau v. Rogers Communications Inc.*, 2004 BCCA 142, in considering the predecessor to Rule 13-1(17), our Court of Appeal stated:

(27) Even if the error in the order was not a "clerical" one or an error arising from an "accidental slip or omission" within the meaning of R. 41(24), then, the court below had the inherent jurisdiction to correct the order insofar as it did not reflect its manifest intention. In the absence of any evidence that the respondents had taken any irrevocable step in reliance on the order, or would suffer undue prejudice were it corrected, I conclude that the Court should have exercised this jurisdiction and corrected its order. In my view, it cannot be in the interests of justice for the respondents to rely on that order to retain a sum to which they have no entitlement in principle.

[10] The defendant says that the Court is *functus officio*. With respect, I disagree. An order has not been entered and, moreover, the Court has its inherent jurisdiction to address the matter.

[11] There was an initial corrigendum on October 28, 2024 where the trial judge addressed a “minor arithmetic error”. A copy of the October 28, 2024 trial judge’s reasons are attached as Schedule A.

[12] I recognize that the trial judge states that “the mitigation component is not altered”. I am satisfied that my colleague was focused on the minor arithmetic error.

[13] There is no basis in legal principle to use earnings of the wrongfully dismissed employee arising after the appropriate notice period to reduce the employee’s claim.

[14] I am satisfied that my colleague with the first corrigendum focussed on the arithmetic error and, through oversight, did not direct his mind to the six months of earnings arising after the 18-month period.

[15] I find that including an extra six months of mitigation earnings would, as noted, be patently unjust.

[16] The plaintiff submits the calculation of the plaintiff’s claim after removing the six months of earnings arising after the 18-month period is \$31,833.71. The plaintiff’s calculation is at Schedule B to these reasons.

[17] The plaintiff’s calculations for the 18-month award period correctly show that \$18,524.29 should not be deducted as this amount represents the plaintiff’s earnings in the six months following the 18-month notice period.

[18] The total earnings for the 11 months in 2023 ending as of November 2023 was \$33,961.20 (the end of November 2023 was the end of the sought 24-month notice period).

[19] With the determined 18-month notice period, the last six months of the plaintiff's earnings in the 24-month period must be removed, that is,  $\$33,961.20 \times 6/11 = \$18,524.29$ .

[20] As a result, the plaintiff's relevant mitigation 2023 earnings are:

$$\$33,961.20 - \$18,524.29 = \$15,436.91.$$

[21] The plaintiff calculates the overall result is a total wage loss of \$31,833.71. I agree.

### **3.0 Conclusion**

[22] The plaintiff is awarded \$31,833.71 as damages for her wrongful dismissal by the defendant.

[23] For greater certainty, the plaintiff is awarded pre-judgment interest as calculated under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

"Funt J."

**Schedule "A"**

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Citation: *Plank v. Hapnin Enterprises Ltd.*,  
2024 BCSC 1949

Date: 20241028  
Docket: S133464  
Registry: Kelowna

Between:

**Nancy-Ann Plank**

Plaintiff

And

**Hapnin Enterprises Ltd.**

Defendant

Before: The Honourable Justice Betton

**Corrigendum to Reasons for Judgment**

Counsel for the Plaintiff:

A.D. Mardiros

Counsel for the Defendant:

P. Tiwari

Place and Dates of Trial/Hearing:

Kelowna, B.C.  
March 11-14, April 2, 2024

Place and Date of Judgment:

Kelowna, B.C.  
October 24, 2024

Place and Date of Corrigendum:

Kelowna, B.C.  
October 28, 2024

[1] This is a Corrigendum to my Reasons for Judgment dated October 24, 2024.

[2] In paragraph [195] of my Reasons, there was a minor arithmetic error. The sum awarded of "\$13,286.92" is to be corrected to "\$13,309.42". For clarity of the exact calculation, I have inserted a table at paragraph [195]. Accordingly, paragraph [195] of my Reasons shall now read as follows:

[195] In my view, 18 months' notice is appropriate. Using the plaintiff's template for calculating the loss, the result is an award of \$13,309.42. For clarity, this is 18/24ths of all of the components of the plaintiff's loss calculation except the deduction of \$960 for the graduated return to work. The mitigation component is not altered. The calculation is as follows:

	<b><u>Plaintiff's Calculations</u></b>	<b><u>Award at 18/24ths</u></b>
80 hours per pay period x 52 pay periods (24 months x \$24 per hour):	\$99,840.00	\$74,880.00
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Subtotal:	\$104,716.80	78,297.60
Minus mitigation of: 2022 T4 North Nakusp:	\$31,026.98	\$31,026.98
Minus mitigation of: 2023 T4 North Nakusp (minus Dec):	<u>\$33,961.20</u>	<u>\$33,961.20</u>
Total mitigation:	\$64,988.18	
Total wage loss:	\$39,728.62	<b><u>\$13,309.42</u></b>

[3] The Reasons are amended accordingly. In all other aspects, the Reasons stand.

"Betton J."

**Schedule "B"**

	Plaintiff's		Award	
	Calculations		18/24ths	
80 hours per pay period x 52 pay periods (24 months x \$24 per hour)	\$99,840.00		\$74,880.00	0.75
(less 40 hours for graduated return until November 30, 2021)	(\$960.00)		(\$960.00)	
Additional 2 week paid holiday time at Hapnin (24 months)	\$3,840.00		\$2,880.00	0.75
Plus difference in holiday pay (6% at Hapnin, 4% at NNA) of 2%	\$1,996.80		\$1,497.60	0.75
<b>Subtotal</b>	<b>\$104,716.80</b>		<b>\$78,297.60</b>	
Minus mitigation of: 2022 T4 NNA	\$31,026.98	\$31,026.98	\$31,026.98	<b>not deducted:</b>
<b>Minus mitigation of: 2023 T4 NNA (minus Dec)</b>	<b>\$33,961.20</b>	<b>\$15,436.91</b>	<b>\$15,436.91</b>	<b>\$18,524.29 0.55 (6/11)</b>
<b>Total mitigation</b>	<b>\$64,988.18</b>	<b>\$46,463.89</b>	<b>\$46,463.89</b>	
Total wage loss \$104,716.80 - \$64,988.18	\$39,728.62			
<b>Total wage loss \$78,297.60 - \$46,463.89</b>			<b>\$31,833.71</b>	