IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Parolin v. Cressey Construction Corporation,* 2025 BCSC 741

Date: 20250423
Docket: S233938
Registry: Vancouver

Between:

Tracy Parolin

Plaintiff

And

Cressey Construction Corporation

Defendant

Before: The Honourable Madam Justice Burke

Reasons for Judgment

Counsel for the Plaintiff:	S. Gleave
Counsel for the Defendant:	E. White E. Raymond
Place and Date of Trial:	Vancouver, B.C. November 25–29, December 2–6, 2024
Place and Date of Judgment:	Vancouver, B.C. April 23, 2025

INTRODUCTION

[1] The plaintiff, Ms. Tracy Parolin, seeks damages for breach of contract, on the basis she was constructively dismissed from her employment with the defendant, Cressey Construction ("Cressey").

[2] As Ms. Parolin was employed by Cressey since April 2005, she claims damages for constructive dismissal in the amount of $156,000 for lost income plus court interest, based on a reasonable notice award of 20 months. In addition, Ms. Parolin seeks an award of punitive damages in the amount of $50,000.

[3] In response, Cressey maintains Ms. Parolin resigned from her employment and is not entitled to any damages. Cressey also maintains that if Ms. Parolin was constructively dismissed, she failed to mitigate her damages.

OVERVIEW

[4] The defendant Cressey is a major real estate developer and construction company located in Vancouver. It provides labour services to the Cressey Development Group of Companies, who are involved in real-estate development, construction, and property management in Vancouver.

[5] Ms. Parolin commenced employment with Cressey as Development Manager in April 2005, pursuant to an unwritten employment contract of indefinite duration. Ms. Parolin says that, in April 2018, she was promoted to Director of Marketing by then Vice President of Development, Mr. Turcotte, which came with a promised salary increase. In March 2020, she commenced working at home due to the Covid pandemic, and then continued to do so in an arrangement she says was agreed to and supported by the defendant. In addition, Ms. Parolin says it has been a term of her contract since her return from pregnancy leave in 2013 that she would have flexibility regarding her working hours due to her childcare commitments, and that reasonable notice was required if there was to be a change in that flexibility.

[6] Between 2018 and 2023, Ms. Parolin sought the promised salary increase for the Director of Marketing role to no avail. On May 10, 2023, Cressey's Vice

President of Development called Ms. Parolin into a meeting and told her that her salary would be increased from $93,600 to $95,000. However, he did not base this salary increase on her Director role, and instead advised Ms. Parolin that a Marketing Manager role was the more appropriate comparable. He also directed her to return to the office from 9 a.m. to 5 p.m., Monday to Friday.

[7] As a result of this May 10, 2023 meeting, Ms. Parolin concluded she had been constructively dismissed and advised the defendant of that conclusion. Ms. Parolin then filed this claim for damages.

ISSUES

[8] The issues that arise in this case are as follows:

(1) Did Cressey constructively dismiss Ms. Parolin, or did she resign?

(2) If Cressey constructively dismissed Ms. Parolin, what is the reasonable notice period and damages to which she is entitled?

(3) Did Ms. Parolin fail to mitigate her damages?

(4) Is Ms. Parolin entitled to punitive damages because of Cressey's conduct?

1. Did Cressey constructively dismiss Ms. Parolin, or did she resign?

Legal principles

[9] The Supreme Court of Canada in *Farber v. Royal Trust Co.*, [1997] 1 S.C.R. 846, 1997 CanLII 387 outlined the definition of constructive dismissal:

> [24] Where an employer decides unilaterally to make substantial changes to the essential terms of an employee's contract of employment and the employee does not agree to the changes and leaves his or her job, the employee has not resigned, but has been dismissed. Since the employer has not formally dismissed the employee, this is referred to as "constructive dismissal". By unilaterally seeking to make substantial changes to the essential terms of the employment contract, the employer is ceasing to meet its obligations and is therefore terminating the contract.

[10] In *Rampre v. Okanagan Halfway House Society*, 2018 BCSC 992, the Court outlined the test to apply in determining whether an employee was constructively dismissed. At para. 64, it said:

> Constructive dismissal engages a two pronged test:
>
> i. Was there a unilateral change by the employer that firstly, constituted a breach of the employment contract and secondly, substantially altered an essential term of the contract? This is an objective test*:* *Potter v. New Brunswick Legal Adi Services Commission*, 2015 SCC 10 at paras., 34, 37 [*Potter*]; and
>
> ii. Did the employer engage in a course of conduct that, when viewed in light of all the circumstances, would lead a reasonable person to conclude that the employer no longer intended to be bound by the terms of the contract?: *Potter* at para. 42.

[11] The Supreme Court of Canada set out principles concerning constructive dismissal in *Potter v. New Brunswick Legal Aid Services Commission*, 2015 SCC 10. The Supreme Court held constructive dismissal can take two forms: a single unilateral act that breaches an essential term of the contract, or a series of acts that, taken together, show that the employer intended to no longer be bound by the contract. As the Court explained:

> [37] At the first step of the analysis, the court must determine objectively whether a breach has occurred. To do so, it must ascertain whether the employer has unilaterally changed the contract. If an express or an implied term gives the employer the authority to make the change, or if the employee consents to or acquiesces in it, the change is not a unilateral act and therefore will not constitute a breach. If so, it does not amount to constructive dismissal. Moreover, to qualify as a breach, the change must be detrimental to the employee.
>
> [38] This first step of the analysis involves a distinct inquiry from the one that must be carried out to determine whether the breach is substantial, although the two have often been conflated by courts in the constructive dismissal context. Gonthier J. conducted this inquiry in *Farber*, in which an employee had been offered a new position that was found to constitute a demotion. He stated that "the issue of whether there has been a demotion must be determined objectively by comparing the positions in question and their attributes": *Farber*, at para. 46.
>
> [39] Once it has been objectively established that a breach has occurred, the court must turn to the second step of the analysis and ask whether, "at the time the [breach occurred], a reasonable person in the same situation as the employee would have felt that the essential terms of the employment contract were being substantially changed" (*Farber*, at para. 26). A breach that is

> minor in that it could not be perceived as having substantially changed an essential term of the contract does not amount to constructive dismissal.

[12] Essentially, the court must first determine whether the employer has breached the employment contract by unilaterally changing it. 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, and there will therefore not be a breach of contract. This is an objective test.

[13] Once a breach has been established, the court must ask whether a reasonable person in the same situation would have felt that the essential terms of the employment contract were being substantially changed. A minor breach will not be perceived as having substantially changed an essential term of the contract and will not amount to constructive dismissal.

[14] As is clear from the above jurisprudence, constructive dismissal is a claim for breach of contract, and governed by the principles of contract law. To establish a claim for constructive dismissal, the plaintiff must therefore first prove, on a balance of probabilities, that the essential terms of the alleged contract are sufficiently clear, based on an objective assessment: *Ratanshi v. Brar Natural Flour Milling (B.C.) Inc.,* 2021 BCSC 2216 at para. 66.

[15] In the absence of a formal written agreement, the court is left to imply the terms of the agreement from the circumstances. A court will imply terms in a number of circumstances. First, terms implied as a matter of custom or usage, based on a presumed intention. Second, terms which the parties to a contract would have assumed, which are implied as necessary to give business efficacy to a contract. Third, terms implied as a matter of law: *Life Innova Capital Inc. v. Perceptronix Medical Inc.*, 2008 BCSC 1132 at para. 76. As noted in that case, “the court will only imply a term of contract ‘if the court concludes that the parties must have intended that term to form part of the contract’”: at para. 77.

[16] The goal of contractual interpretation is to objectively determine the intention of the parties at the time the contract was made: *Eli Lilly & Co. v. Novopharm Ltd.*,

[1998] 2 S.C.R. 129, 1998 CanLII 791 at para. 54. As such, a term cannot be implied unless it represents the intention of the parties. A key consideration is whether and to what extent the parties behaved as if they were bound by an enforceable agreement: *Sattva Capital Corp. v. Creston Moly Corp*, 2014 SCC 53 [*Sattva Capital Corp.*] at paras. 46–47.

[17] If there are disagreements on the terms of an oral contract, the interpretation of the oral contract turns on the same essential principles applicable to a written contract. As noted, the goal is to determine objectively the intention of the parties at the time the contract was made: *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.,* 2009 BCSC 1303 at para. 328. The question is whether a reasonable objective bystander would conclude that, in light of the circumstances, the parties intended to contract, and if so what essential terms exist that are sufficiently certain: *UBS Securities Canada, Inc. v. Sands Brothers Canada, Ltd.,* 2009 ONCA 328 at para. 47.

Overview of Parties' positions

[18] With respect to the applicable oral terms of her contract of employment, the plaintiff maintains she was promised flexibility at work when she returned form pregnancy leave in 2013 to accommodate her chid care needs and her wish to be present in her children's life. She says she was also promoted to the Director of Marketing role with the expectation that the role was supportive of her flexible work schedule.

[19] The plaintiff also submits that, when she was promoted to Director of Marketing in 2018, the defendant promised her that she would be considered for a pay increase. She kept pressing for this salary increase over the course of five years, making numerous requests, and was dismissed as not deserving a salary increase because of her choice to accommodate childcare needs with her working life.

[20] The plaintiff says there was no consideration in good faith of this request. In the end, Mr. Cressey decided he would not speak to her about the salary increase;

instead, he sent in Mr. Kendall to “negotiate” with her based on the fundamental condition she give up her flexible schedule and remote work. She received a salary increase of $1,400 with no retroactivity, and without regard to how she would have to incur additional childcare costs. She was also told that she must return to the office to perform her duties from 9 a.m. to 5 p.m., Monday to Friday.

[21] The plaintiff says this was an exit plan to pressure her to quit because she had consulted a lawyer in the hopes of securing her salary increase. Once the defendant heard she consulted a lawyer, Mr. Cressey initiated a fundamentally flawed review process to secure a small salary increase, based on a job she didn’t do, and introduced the direction to return to work in the office on a full-time basis. The plaintiff says that the defendant intentionally made her an offer they knew she should refuse so that she would quit.

[22] The plaintiff set out a number of categories of evidence that she says satisfy her claim for constructive dismissal, including the following:

- Failure to adjust the salary for the Director role in accordance with the reasonable expectations of the parties and the specific understanding of the parties when she accepted the role;

- unilateral and without-notice changes to flexible working hours and at-home work arrangements that were, to the defendant’s direct knowledge, a fundamental term of the plaintiff’s contract of employment; and

- a pattern of conduct that, in bad faith, was designed to put pressure on the plaintiff to leave her employment or to marginalize and diminish her role to the extent that her job became something entirely different from the one that she had accepted when she assumed the Director role;

[23] In sum, the plaintiff submits that the breach of her employment contract, seen in the context of the employment relationship as a whole, is sufficiently serious to justify a finding of constructive dismissal. The plaintiff alleges that one of the bases

of this constructive dismissal was the defendant's unilateral and without notice change to her flexible working hours and at home arrangement that was a fundamental term of the plaintiff's contract of employment.

[24] The defendant, however, maintains there are no express terms of Ms. Parolin's contract that would ground these allegations of constructive dismissal. The defendant says the plaintiff therefore has to first establish that there were implied terms of the employment contract as follows:

- that she could work from home full-time and indefinitely, on hours of her own choosing outside of regular hours (i.e. 9 a.m. to 5 p.m.);
- that she was entitled to the job title of Director of Marketing; and
- that she was entitled to a salary above $93,600 and to be paid more than her counterparts with less experience and service.

[25] The defendant points out an employer has a broad mandate to direct its workforce and is generally entitled to determine the location where the employee will carry out their work for the company: *Stein v. British Columbia (Housing Management Commission)*, 65 B.C.L.R. (2d) 181, 1992 CanLII 4032 (B.C.C.A); *Columbia Didge (1967) Ltd. (Re),* [2003] B.C.E.S.T.D. No. 158, 2003 CanLII 89163. A refusal to return to a work location may be considered insubordination sufficient to establish cause for termination: *Staley v. Squirrel Systems of Canada, Ltd.,* 2013 BCCA 201.

[26] A key question in this case therefore is what are the terms of the plaintiff's employment contract. I turn now to the pertinent facts that can be established in this case and whether they support the plaintiff's claim.

Plaintiff's early employment at Cressey and flexible work schedule

[27] Mr. Hani Lammam commenced his employment at Cressey in 2001 and became the Executive Vice President in 2014. Mr. Lammam and Ms. Parolin were friends, and he facilitated her initial employment in 2005 with the company.

[28] Ms. Parolin commenced employment with Cressey as a Development Manager at a salary of $60,000, reporting to Mr. Lammam. Her duties included project management, which included composition, permitting, construction, sales, and the closings of those sales. By 2011, her salary had increased to $90,000, while her duties remain the same.

[29] Cressey employed two other Development Managers at the time: Jason Turcotte and David Evans.

[30] In June 2012, the plaintiff took maternity leave until April 2013. She had twin daughters, one of whom had a health issue. In Spring 2013, Mr. Lammam met with the plaintiff and asked if the plaintiff would be willing to come back to work on a full-time basis. The plaintiff returned to work in the office four days a week. The plaintiff says that as part of her return to work, she and Mr. Lammam discussed flexibility in her schedule, and he agreed to her request for flexibility in her work hours. Mr. Lammam told her he understood when Ms. Parolin indicated she wanted to be present for her children.

[31] Between 2014 and 2018, the plaintiff reported to Mr. Lammam. She reported to Mr. Turcotte from 2018 to 2021, who had become the Vice President of Development in 2014. Mr. Lammam says he therefore had very little to do with the supervision of the plaintiff between 2018 and 2021.

[32] During this time, the plaintiff continued on a flexible work schedule. She indicated that Mr. Turcotte, as Vice President of Development, regularly approved her flexible work schedule. Examples include a June 2016 email from Ms. Parolin to Mr. Turcotte asking him to approve her hours, as she worked 28 hours in one week and 30 hours in another week. Mr. Turcotte approved these hours. In August of 2017, Ms. Parolin sent an email to Mr. Turcotte setting out her work schedule for the Fall. In that email, she noted that she “may have to pop out for drop off and pick up” of her children. She also indicated her specific hours for the Fall, being “M: 8:30 – 2:00; T: 8:30 – 3:00 (every 2nd Tuesday of every month school ends at 1:00 pm); W: 8:30 – 3:00; Th: 8:30 – 3:00 and F: 8:30 – 3:00”, starting September 18. She also

advised she had no nanny or extra help, and was trying to see if she could get her children into after school care for a couple of days but was on the waitlist.

[33] At trial, Mr. Turcotte agreed that he approved of this flexible schedule. He also agreed that he never told the plaintiff to cease her flexible work hours, as he knew that she required flexible work hours in order to pick up her kids for childcare. In October 2017, Mr. Turcotte relied upon and forwarded the plaintiff's flexible work schedule to Payroll and Benefits to "be sure that her hourly is reflective of this schedule".

Plaintiff's 2018 promotion

[34] In 2018, Cressey advertised and interviewed a number of candidates for the role of Director of Marketing. At least two candidates were seriously considered, and one offer was unsuccessfully made.

[35] Mr. Turcotte says that, during this time, Mr. Lammam expressed concerns to him about the plaintiff's performance as Development Manager. Mr. Turcotte says it occurred to him that the plaintiff's performance style and strengths were better suited to a role in sales and marketing, which would also better accommodate her flexible work schedule.

[36] Before talking to the plaintiff about the Director of Marketing role, Mr. Turcotte said he discussed the matter with Mr. Lammam, who responded positively. Mr. Turcotte then spoke to the plaintiff to identify and describe the new role and told her it would be a better fit for her flexible work schedule. As part of their discussions, he sent her an email dated April 14, 2018 which attached a Cressey Director of Marketing job description.

Alleged performance issues

[37] It is necessary to first address the plaintiff's alleged performance issues, as Mr. Turcotte and Mr. Lammam rely on them as part of the motivation for the plaintiff's promotion to the Director of Marketing role.

[38] Mr. Turcotte agreed in cross-examination that Cressey did not conduct performance reviews or evaluations. In his view, there was no need to do so, as he provided feedback to the plaintiff in their regular discussions.

[39] In cross-examination, Mr. Lammam agreed with Mr. Turcotte's testimony, and indicated that he too believed the Director of Marketing position would be a good fit for Ms. Parolin, as she would be able to work part-time hours. Mr. Lammam also agreed that he thought the new position would be well-suited to Ms. Parolin due to her performance issues. He also agreed, however, that he did not speak to Ms. Parolin directly about these issues and there were no emails, documents, or annual performance reviews that would substantiate this.

[40] With respect to the alleged performance issues, I conclude I must discount the evidence of Mr. Truscott and Mr. Lammam at this point. None of this was put to or even alluded to the plaintiff. Neither Mr. Turcotte nor Mr. Lammam provided any detail of the performance issues, other than what was referred to as some difficulty with collaboration when the plaintiff was not in the office. The plaintiff maintains that she was available at any time by phone or other virtual means if needed. I find the allegation of performance issues fundamentally weak and completely without detail. No documents of any sort reference this issue. In view of all this, the Court cannot consider this to be an issue of any weight.

Work location and work hour flexibility

[41] In March 2020, all Cressey head office employees began working from home, due to the Covid pandemic. After approximately six to eight weeks, almost all of these employees returned to work at the head office location. The plaintiff says however she spoke to Mr. Turcotte about continuing to work from home. Mr. Turcotte "understood and said it was okay".

[42] After Mr. Turcotte left the company in 2021, the plaintiff reached out to Mr. Lammam to discuss this work from home arrangement she had with Mr. Turcotte. She had a conversation with Mr. Lammam about continuing to work from home, because she had health concerns for one of her children and her girls

were not at school. Mr. Lammam advised her, as long as the job was getting done, it did not matter where she worked. In his testimony, Mr. Lammam said his assumption was that when the Covid pandemic was done, Ms. Parolin would return to the office. This was not however communicated to the plaintiff.

Application of legal principles

[43] The defendant submits that the plaintiff has not established that there was an implied term in her employment contract that she could work at home indefinitely. The defendant points out that, throughout her employment, the plaintiff conducted her work from Cressey's office until the Covid pandemic in March 2020. After 2020, the plaintiff remained the only head office employee working remotely. She lived only a ten-minute drive from head office, and at no time did the company promise how long the plaintiff would be permitted to continue to work from home. The context of the company's approval of this arrangement was in circumstances where the plaintiff's supervisors knew that she had a daughter with a health issue, that she had a genuine concern for Covid, and that her children were not attending school in person full time because of Covid.

[44] With respect to work hour flexibility, and as set out above, the plaintiff says that she and Mr. Lammam talked about the flexibility she would have in her work schedule after she returned from maternity leave in 2013. While she did not recall the specifics, she says that once her children were in kindergarten, she was "given flexibility to drop off and pick up the kids 5 days a week". Her hours of work in 2017 were approximately 8:45 a.m. to 2:15 p.m.

[45] Starting in March 2020, while she worked from home, her work hours increased to 9 a.m. to 5 p.m., although she says she was being paid for 30-35 hours per week.

[46] In March of 2023, Ms. Parolin started reporting to Mr. Kendall and changed to full-time hours. This was approved by Mr. Kendall. There was, however, no change to her flexible work schedule—she maintains that it was still a term of her contract that she could have flexibility while working full-time hours. Her work hours from

March 2023 were generally 9 a.m. to 5 p.m., but she worked additional hours to ensure she was working eight hours a day; 40 hours a week. She would leave her house and pick up her children every day at 3 p.m., but did not advise Mr. Kendall or Mr. Lammam when this occurred.

Finding on implied terms of flexibility

[47] As set out in the jurisprudence, in the absence of a formal written agreement, the court is left to infer the terms of the agreement from the circumstances. A key consideration is whether and to what extent the parties behaved as if they were bound by an enforceable agreement, *Sattva Capital Corp*., para. 46–47. The goal of contract interpretation is to determine objectively the intention of the parties at the time the contract was made. The essential terms of an employment contract can be found to have been entered into orally.

[48] I conclude the plaintiff has established that, upon her return from maternity leave in 2013, her employment contract included a term providing flexibility in her work hours to accommodate her childcare commitments. In her initial conversation with Mr. Lammam, when he asked the plaintiff to return to work after maternity leave, the plaintiff identified this as an issue. Mr. Lammam agreed to allow flexible work hours to accommodate her childcare needs. When she was offered and accepted the Director of Marketing role in 2018, Mr. Turcotte indicated the position would be a good fit as she would be able to work flexible work hours and be successful. In that role, she continued to work those flexible hours at the Cressey head office location.

[49] This arrangement continued to be approved until the events of May 10, 2023. This is evidenced by Mr. Turcotte and human resources approving Ms. Parolin's flexible work schedule in 2017 and at other times, where she worked selected hours over the course of a week to accommodate child drop off and pick up at school.

[50] Ms. Parolin worked this flexible work schedule, as agreed to by her employer, for over ten years during which time she would fulfill her childcare responsibilities during her workday.

[51] The defendant argues however, that the company was not aware that Ms. Parolin was working these flexible hours while she was working from home after the onset of Covid in March 2020. However, I find that the company knew about her need for flexible hours throughout her employment, which included picking up her children, over the years. It is not necessary to establish the company knew of her specific childcare needs, but rather that they knew and agreed to accommodate her childcare needs, which were particularly acute during Covid due to the health issues of one of her children.

[52] I therefore agree with the plaintiff that this flexible work schedule/arrangement was part of the plaintiff's employment contract. I find this flexibility also applied to Ms. Parolin working from home. As set out above, following the onset of Covid in March 2020, Ms. Parolin remained working from home due to her childcare needs and her health concerns for one of her children. Her children did not return to school for that same reason until September 2021. This arrangement was agreed to and supported by Mr. Lammam, who told her in 2021, after the departure of Mr. Turcotte, that she did not need to work at the office, as he knew she was getting the work done and the location did not matter.

[53] Furthermore, in June 2021, Mr. Lammam approved Ms. Parolin setting up an office at home and purchasing her own equipment for this home office. This was well after the other employees had returned to the head office, as evidenced by an email of June 21, 2021. There is therefore little doubt that it was an ongoing term of employment that Ms. Parolin could work from home, which Ms. Parolin relied-upon and the company accepted.

[54] I also note that, throughout her testimony, the plaintiff indicated she was aware of the need to work with others, attend meetings- including regular team meetings at the office, and ensure she was available to collaborate. While the terms of her employment included flexibility, this was tempered by the needs of the company, which she indicated she understood. The flexibility noted above was to accommodate her childcare needs.

[55] This flexibility continued to May 10, 2023. At this time, Ms. Parolin was working from home, working full time, and attending to childcare needs during the day, as required.

[56] I will deal with when and whether that changed further in my analysis.

Finding on constructive dismissal

[57] In addition to the plaintiff's claim of flexibility in working hours and vacation, the defendant disputes the plaintiff's allegation that she was demoted to Marketing Manager. The defendant says a change in job title must be accompanied by other changes, such as a reduction in compensation and responsibilities, to constitute a substantial alteration to an essential term amounting to constructive dismissal: *Pannell v. Imperial Paving Ltd* 2010 BCSC 1762.

[58] The defendant also says that the plaintiff has not established, on the evidence, that her contract included an implied term that she was entitled to the job title of Director of Marketing.

[59] At trial, Mr. Turcotte testified that he did not say he would consider a wage increase during his initial conversation with Ms. Parolin in 2018 about the Director of Marketing role. He testified that this was discussed later. Similarly, Mr. Lammam testified that he did not know Mr. Turcotte had agreed to support Ms. Parolin's request for a wage increase.

[60] In contrast, the plaintiff says that in 2018, when she was offered and accepted the role of Director of Marketing, Mr. Turcotte *did* tell her he would consider a pay increase and bonus structure for her in that position. He also provided her with a written job description entitled Director of Marketing.

[61] Ms. Parolin says she performed all the duties of the Director of Marketing role, pursuant to the job description, and consistently asked for a pay raise over the years since her 2018 promotion.

[62] There is some debate about the pertinence of the job description, with the company witnesses—particularly Mr. Hammam, Mr. Kendall and Mr. Cressey—discounting its importance and applicability to Ms. Parolin's position. I reject this evidence as self-serving. The job description was attached to an email to Ms. Parolin, and referenced a number of times by Ms. Parolin as she sought a wage increase. She also relied on the job description in her testimony about the duties she fulfilled in the Director of Marketing role.

[63] Furthermore, Mr. Turcotte noted that the job description was attached to an employment offer to an outside applicant in 2018, when Mr. Turcotte was seeking to implement this position. While the company says it has been unable to find this offer of employment, there is no real dispute that Mr. Turcotte utilized the job description when recruiting for the Director of Marketing position.

[64] As set out, Ms. Parolin consistently raised the issue of a salary increase after her promotion in 2018, as per Mr. Turcotte's promise to consider such a raise. While there is some discrepancy in the evidence as to whether Mr. Turcotte made this assurance at the time Ms. Parolin accepted the Director of Marketing position, the facts establish Mr. Turcotte did conclude that Ms. Parolin's work merited a salary increase. However, the defendant says an agreement to agree is not a binding contract, and that a promised future salary raise therefore cannot be considered a term of the employment contract: *Jung v. Lheidli T'enneh Indian Band*, 2000 BCSC 578; *Bryan v. University of British Columbia,* [1987] B.C.J. No. 315, 1987 CanLii 2838 (B.C.S.C.); *Pavlis v. HSBC Bank Canada*, 2009 BCSC 498.

[65] With respect to this issue, Mr. Turcotte recalled the plaintiff inquiring about a possible salary increase in 2019, to which he replied he would discuss that with Mr. Cressey, as it was not within his authority. He testified that Mr. Cressey was skeptical, and was of the view that, since the Director of Marketing was a new role, a wage increase would not be discussed until the plaintiff had performed in the role and her performance had been assessed. Mr. Turcotte agreed that he supported a discussion about a wage increase with Mr. Cressey once the plaintiff had been in the

role for some time. He said he felt it proper to engage Mr. Cressey after the Mason project, which concluded sometime in 2020 or 2021, before he left the company. Mr. Turcotte also recalled indicating to Ms. Parolin that her flexible work schedule was a factor she needed to consider and recognize in any discussion of a wage increase. He denied indicating this was because of childcare issues.

[66] In trying to secure a salary increase, Ms. Parolin provided both Mr. Lammam and Mr. Cressey detailed submissions of her work in the Director of Marketing role. In November 2021, after the departure of Mr. Turcotte, Ms. Parolin sent an update to Mr. Lammam setting out her job duties as Director of Marketing. On February 22, 2023, Ms. Parolin sent an email to Mr. Cressey, requesting a meeting to discuss her wages. She attached a list of duties she performed as Director of Marketing. Mr. Lammam denied seeing or getting a copy of this email.

[67] On February 27, 2023, Ms. Parolin sent an email seeking Mr. Lammam's support for a wage increase. Mr. Lammam said he did not respond as Ms. Parolin did not report to him. Mr. Lammam said Ms. Parolin came into his office in late February or March 2023 to discuss both the wage increase and working from home. Mr. Lammam said he told her that her working from home was not working, as it was challenging for others on the team to collaborate with her—especially since the team worked in a pod structure, with glass walls so they could see what people were doing and interact collaboratively.

[68] With respect to salary, Mr. Lammam denied saying that he believed Ms. Parolin was already being paid enough since she worked at home and took care of her kids. Ms. Parolin responded that, if Mr. Lammam didn't support her, they could talk about parting ways and she would talk to a lawyer. Mr. Lammam says he advised Mr. Cressey of this conversation.

[69] Mr. Lammam was also involved in other discussions leading up to the May 10, 2023, meeting between Mr. Kendall, the Vice President of Development, and Ms. Parolin. He said he was part of a 15-minute meeting in Mr. Cressey's office along with Mr. Kendall, who advised of what he considered suitable comparables for

the job duties of Ms. Parolin. When cross-examined on how Ms. Parolin's working from home became part of the meeting, Mr. Lammam said this was discussed in terms of her work performance. He said, "we discussed that the arrangement did not work well because she was not in the office, and this affected collaboration".

[70] On May 10, 2023, Ms. Parolin had a meeting with Mr. Kendall to discuss her salary increase. Mr. Kendall told her that she was to return to the office to work from 9 a.m. to 5 p.m., Monday to Friday. Ms. Parolin testified that Mr. Kendall asked her a number of times whether this was a "non-starter". There is some dispute as to whether this occurred. Ms. Parolin says Mr. Kendall also told her that she could take it up with Mr. Cressey, but that Mr. Cressey himself made this decision and was adamant she return to the office. Mr. Kendall denies saying "was this a 'non-starter'"; and denies indicating that Mr. Cressey was "adamant" she return to the office.

[71] Mr. Kendall then told Ms. Parolin that her salary would be increased from $93,600 to $95,000—an increase of $1,400 a year. He indicated he had viewed comparables for both Marketing Manager and Marketing Director roles, and her position was more comparable to a Marketing Manager, since she did not supervise a team.

[72] Ms. Parolin's account of the May 10, 2023, meeting is significantly different than Mr. Kendall's version. While Mr. Kendall testified he had notes of the meeting made within days of the meeting, these notes were not produced. While counsel asserts privilege over the notes, they were not listed in the document list. The plaintiff asks for a negative inference from the failure to produce a key document, and for the Court to conclude this document does not accord with Mr. Kendall's testimony.

[73] I accept Ms. Parolin's account of the May 10, 2023, meeting. While Mr. Kendall says he offered to set up a meeting with Mr. Cressey so that Ms. Parolin could discuss the possibility of working from home for one or two days, this did not appear to be a real opportunity, given Mr. Cressey's negative views of working from home. I will not recite the evidence here but suffice it to say, in his testimony at trial,

Mr. Cressey expressed strong views that employees should work in the office. This is consistent with Mr. Cressey being adamant that Ms. Parolin return to the office, despite, as he expressed it, Ms. Parolin being a valued employee. It is therefore more likely that Mr. Kendall used the words that Mr. Cressey had made the decision and was “adamant” that Ms. Parolin return to the office.

[74] In addition, the defendant did not provide evidence of documentation setting out comparables for a Marketing Director or Marketing Manager, reflecting, as the plaintiff has argued, the Company’s predetermined dismissive view of Ms. Parolin’s role. The plaintiff’s Director of Marketing role was regularly identified as part of her signature in emails, and the defendant identified her position as Director of Marketing on the Record of Employment issued shortly after May 10, 2023 meeting. This is consistent with the plaintiff’s position that she was employed as the Director of Marketing.

[75] The plaintiff says the defendant clearly based its decision about her salary on irrelevant and improper considerations—specifically, on a job she did not perform and one which was at a lower level. The plaintiff says this constituted an implied demotion to a Marketing Manager role. The plaintiff further says that the defendant acted in bad faith by requiring her to return to the office and give up her flexible schedule as part of securing a salary increase.

[76] There is no evidence of the criteria or comparable positions used in Mr. Kendall’s survey. The only evidence on comparable positions was provided by the witnesses from Mosaic Homes and Anthem Properties. This demonstrated that Marketing Directors were earning in excess of $125,000, entirely consistent with Ms. Parolin’s request to Mr. Hamman to be paid $130,000.

[77] The plaintiff says that Mr. Hammam, Mr. Kendall, Mr. Turcotte and Mr. Cressey were clearly dismissive of her role as Director of Marketing by claiming this wasn’t the job she was doing. The plaintiff relies on the fact that the job description for her Director of Marketing role was designed and offered to another

person, and that a further negative inference should be drawn from the defendant's failure to produce this offer.

[78] Ms. Parolin's evidence was also clear and cogent on various events and statements, including: her exclusion from important budget and marketing meetings; statements made towards her that there was a cost associated with working at home and taking care of kids; Mr. Turcotte telling her that she missed a meeting doing "mommy things"; and Mr. Hammam telling her that she wasn't included in events because she was different—a girl.

[79] Overall, I conclude that, where there are discrepancies in the evidence, I prefer Ms. Parolin's evidence. Ms. Parolin testified clearly and concisely, and she did not embellish the facts. She also readily admitted to facts that had the potential to adversely affect her case. In contrast, the defendant's witnesses were by and large defensive in critical areas which adversely affected their testimony. As noted earlier, Mr. Cressey's testimony on working at the office was strikingly strong, such that it lent credence to Ms. Parolin's version of events of the May 10, 2023 meeting—in particular, the comment relayed by Mr. Kendall that Mr. Cressey was adamant that Ms. Parolin return to working at the office.

[80] I am, however, inclined to agree that a promise to consider a pay raise is just that, and cannot be considered a binding term of employment. Cressey did not treat the plaintiff very well in consistently delaying, over a number of years, the consideration of this promise. While this treatment may go to other issues, such as bad faith, it does not establish a conclusive term of employment.

[81] More importantly in this case, however, is the question of Ms. Parolin's position and how that was addressed in the context of a pay raise in the May 10, 2023 meeting. When the employer finally gave some consideration to a pay raise for Ms. Parolin, it tied this to a direction that she return to the office. Mr. Kendall discounted Ms. Parolin's job duties as Director of Marketing on the basis that she did not have a team to supervise, and he therefore relied significantly on Marketing Manager comparables.

[82] While the defendant notes that the plaintiff is arguing this was an implied demotion, it maintains that a change in job title must be accompanied by other changes, such as a reduction in compensation and responsibilities, to constitute constructive dismissal: *Pannell v. Imperial Paving Ltd* 2010 BCSC 1762 [*Pannell*]. In *Pannell*, the Court found a reorganized position with reduced responsibilities and a substantial reduction in wages constituted a constructive dismissal.

[83] In this case, the defendant points out that Ms. Parolin admitted that Mr. Kendall's reference to a Marketing Manager role came up in the context of income discussions. No one at Cressey changed Ms. Parolin's job duties, responsibilities, or job title in 2023, and Cressey did not advise her that her position had changed.

[84] I disagree with these propositions.

[85] I conclude that Ms. Parolin has established that she performed the role of Director of Marketing at Cressey. As part of her accepting the role, Mr. Turcotte provided her with a job description entitled Director of Marketing. Ms. Parolin performed the duties in that job description, as largely confirmed by Mr. Turcotte. While Mr. Turcotte was only able to testify about the time until his departure in 2021, I accept Ms. Parolin's testimony that she performed all the duties of the Director of Marketing role. After, Mr. Turcotte's departure, Ms. Parolin also set out to both Mr. Hamman and Mr. Cressey, detailed submissions as to what she performed as part of her role and her duties as the Director of Marketing. There is no doubt that Ms. Parolin was treated by Cressey as the Director of Marketing from the time of her acceptance of this position in 2018.

[86] Furthermore, as established by Mr. Turcotte's evidence, his view was that the plaintiff deserved consideration of a raise. Mr. Turcotte referenced his recognition of her performance on the Mason project, and acknowledged that he was supportive of a pay raise for Ms. Parolin and her productivity working at home. Mr. Cressey had recognized her work and referenced this in his words to her at the Cressey 2021 holiday party. Mr. Kendall approved payment of Ms. Parolin's hours to full time in

March 2023, recognizing her work and productivity in the role. All of this impacts the question of whether Ms. Parolin was constructively dismissed on May 10, 2023.

[87] I have concluded that a term of Ms. Parolin's employment contract was her ability to work flexible hours at home, due to childcare commitments. This term was not indefinite, as it was tied to childcare commitments. While I accept that employers have the ability to manage their workforce, including the location of work, that is tempered where a binding term in an employment contract exists. In this case, while the term of flexible hours and location in employment contract is oral, I have concluded it exists, and thus can only be changed with reasonable discussion and/or notice. There is no question that Cressey knew of Ms. Parolin's flexible work arrangement, which she had for ten years, and her work from home arrangement, which she had for three years. The defendant authorized this, knew it existed, and supported it over that time. I have therefore found Ms. Parolin's flexible work hours and location to be oral terms in her contract of employment, as set out above.

[88] I have also found that during the May 10, 2023, meeting between Ms. Parolin and Mr. Kendall, Mr. Kendall directed Ms. Parolin to return to working at the Cressey office location, from 9 a.m. to 5 p.m., Monday to Friday. While Mr. Kendall suggested that Ms. Parolin could discuss her concerns with Mr. Cressey, this was fundamentally undermined by Mr. Kendall's own comments that the return to work was Mr. Cressey's idea, which he was "adamant" about. In addition to the consistent deflection of Ms. Parolin's request for a wage increase over the years, I find that this conversation reinforced for Ms. Parolin the futility of maintaining both the flexible work arrangement and a reasonable raise.

[89] I note again that the defendant maintains that much more than a change in job title is needed to establish a constructive dismissal, and that it must be accompanied by other changes such as a substantial reduction in compensation and reduced responsibilities.

[90] In this case, I find that the combined effect of a direction to return to work at the office without notice, the provision of such a small salary increase, and

Mr. Kendall's reference to a Marketing Manager position as the most comparable position established, in effect, a demotion for Ms. Parolin, who had been working and treated all along as a Director of Marketing. This demotion, along with the unilateral change in essential terms of her employment contract, is sufficient to establish a breach of her employment contract and ultimately her constructive dismissal.

[91] Ms. Parolin was offered a raise of only $1,400 after five years of doing her job, when she was seeking a salary of $130,000. The evidence of both the witnesses from Mosaic Homes and the witness from Anthem Properties established that Ms. Parolin's request for a significant raise was consistent with the Marketing Director salaries of over $125,000 offered at each of those companies.

[92] It is clear that Mr. Cressey, Mr. Hamman, and Mr. Kendall, in considering the question of a salary increase, decided that Ms. Parolin was a Marketing Manager. The evidence establishes they did so without giving serious or even any consideration to the information Ms. Parolin sent to both Mr. Cressey and Mr. Hamman about her actual role and responsibilities.

[93] Furthermore, Mr. Kendall did not provide any documentation about the salary survey upon which the salary raise was considered, other than referencing the Marketing Manager positions and his view that Ms. Parolin's role was closer to that position. The company, by virtue of it salary offer, made clear their view that Ms. Parolin was in a Marketing Manger position without any consideration of her job duties or her job description, and despite her regularly used and sanctioned job title—Director of Marketing. I agree that, despite Mr. Cressey's testimony that he considered Ms. Parolin a valued employee, he, along with Mr. Kendall and Mr. Hamman, was dismissive of her work and her role.

[94] I note the direction to return to work in this context was consistent with that view. This in conjunction with what was effectively a demotion made evident to Ms. Parolin, establishes the constructive dismissal of the plaintiff. I conclude Cressey's direction to work back in the office from 9 a.m. to 5 p.m., along with the

small salary increase consistent with a Marketing Manager position, was a unilateral change to a term of Ms. Parolin's contract which substantially changed the contract and resulted in her constructive dismissal.

[95] A unilateral breach of Ms. Parolin's contract has been established on the evidence. As per the jurisprudence, I conclude a reasonable person in the same situation would have felt that the essential terms of the employment contract have been substantially changed. This was not a minor breach of the essentially terms of the contract. It was clear as a result of the May 10, 2023 meeting that Cressey no longer intended to be bound by the essential terms of that contract and constructively dismissed Ms. Parolin from her employment.

2. As Cressey constructively dismissed Ms. Parolin, what is the reasonable notice period and damages to which she is entitled?

[96] Ms. Parolin seeks damages for a reasonable notice period of 20 months. The defendant, however, maintains Ms. Parolin would only be entitled to notice at the low end of the 14-18 month range, largely on the basis that she is not of an age that would lead to a higher notice period.

[97] Ms. Parolin was born in 1970 and is now 55 years old. She has worked for Cressey for 18 years. Her position as Director of Marketing reflects a senior position in the company. I am therefore inclined to award reasonable notice in damages in the higher range. I note the cases relied upon by the defendant to support an award at the low end reflect either younger individuals or those with less authority or time with the company. As an example, in *Cox v. Robertson*, 1999 BCCA 640, the individual was awarded 13 months reasonable notice in damages after 18 years of employment. She was, however, a dental assistant, which does not reflect a senior role in a company. The other cases with similarly lower awards are for managers, and I have concluded Ms. Parolin is a tier above a manager, being the Director of Marketing and not a Marketing Manager. I therefore conclude an award of 19 months, which is of the higher end of the range, is justified in these circumstances.

3. Did Ms. Parolin fail to mitigate her damages?

[98] I now turn to the question of whether Ms. Parolin failed to mitigate her damages.

[99] Following her constructive dismissal from Cressey, the plaintiff chose to first start a business in the development sector called Sova Home. Since June 2023, she sought small residential projects to develop into 2+ unit homes. On July 10, 2023, she applied to register the Sova Home name for her business, which would focus on small residential developments on single family lots. She indicated she had development experience from her time at Cressey, and also had been part of her family building two homes on residential lots. In August of 2023, Ms. Parolin had a business partner and made an offer to buy a property, but was not successful.

[100] In October 2023, Ms. Parolin focussed on a second business called Maro Design. The business idea was to develop an AI-based product where a user can answer a number of design preference questions and connect platforms such as Pinterest to generate renderings, along with colour and material specification. Based on Ms. Parolin's experience in the development industry, she wished to develop a tool that would make custom interior design cheaper and more accessible to everyone.

[101] Maro Design Ltd. was incorporated in November 2023. The development of the design product was, however, paused following extensive research and consultation with industry experts in machine learning, which identified that the necessary technology was not yet sufficiently advanced.

[102] The plaintiff and her business partner then redirected their focus to Tech Safe Kids. This is an interactive learning platform for teens, structured as a game-based experience. The program is designed to educate participants on cell phone e-safety, digital etiquette, and online security, with an emphasis on mental health. A business plan was created in April 2024, and the partnership applied for several grants and engaged a game developer to assist with the design, development, and production. Late in November 2024, the product was accepted by the Centre for Digital Medial to

enter into a partnership with their current students' cohorts. The Centre will construct the prototype at a cost of $15,000, instead of the estimate of $500,000 provided by private vendors.

[103] The anticipated timeline for the development of Tech Safe Kids is approximately 10 months, with a projected soft launch date in late 2025 or early 2026. The company estimates initial revenue of $420,000 for the first year, based on Statistics Canada's estimated population of 2,100,000 children aged 10-14. The goal is to have approximately 1% of this population participate in the course, with an average price of $20. The company also plans to expand into the USA, with a population of 31 million children in the same age range, and to ultimately go global.

[104] The defendant argues however, that the plaintiff failed to mitigate her damages. It points out that following termination, an employee has a duty to act reasonably and take such steps as a reasonable person would take in her own interest to maintain her income and position in her industry, trade, or profession. If an employee fails to do so, the Court will reduce the wrongful dismissal damages accordingly: *Forshaw v. Aluminex Extrusions Ltd.* (1989), 39 B.C.L.R. (2d) 140, 1989 CanLII 234 (B.C.C.A.) [*Forshaw*]. In *Goetz v. Instow Enterprises Ltd.,* 2021 BCSC 709 [*Goetz*], the Court confirmed the duty to mitigate requires an exploration of what is available through all means: para. 79.

[105] Given Ms. Parolin's experience in the development industry and marketing, the defendant says it was unreasonable for Ms. Parolin not to search for replacement employment and instead to start multiple business. The defendant says Ms. Parolin does not have experience running her own business, and no formal education in doing so. She did not prepare a business plan before starting her first business and was aware of factors such as high construction costs and interest rates. Within a few months, she moved onto her next venture. The defendant points out again that she did not prepare a business plan for this next venture.

[106] The defendant states that it has established there were marketing positions open at Mosaic Home and Anthem Properties starting in June 2023, and that an

inference can therefore be drawn that there were available comparable jobs following the May 2023 meeting.

[107] With respect to available positions, while witnesses from Mosaic Homes and Anthem Properties did indicate they had comparable positions, both had work at office policies with limited ability to work at home. I must take this into account in assessing the overall efforts of the plaintiff to mitigate her damages.

[108] The Court must consider the reasonableness of the plaintiff's choice to start her own business. The defendant says that while the plaintiff may choose to start a business, the defendant should not have to pay for this choice when there were available positions that the plaintiff should have availed herself of. It therefore maintains that she could likely have obtained comparable alternative employment and should have explored what was available through all means, per *Goetz*.

[109] There is no doubt the plaintiff did not explore available positions in the industry. The question therefore becomes was it reasonable for her not to do so and to focus on starting a business instead.

Legal Principles and Analysis

[110] The defendant relies upon *Schinner v. Kwantlen Polytechnic University,* 2016 BCSC 2026 and *Cimpan v. Kolumbia Inn Daycare Society,* 2006 BCSC 1828. It points out that, in those cases, where the employees chose to work part-time and continue studies or elected to take full-time studies and still sought damages for full-time employment, the Court dismissed the action or reduced damages on the basis of a failure to mitigate.

[111] The defendant also points to *Hart v. EM Plastic & Electric Products Ltd.*, 2008 BCSC 228, in which the Court found the terminated employee acted unreasonably by embarking on a real estate career. In considering whether this was a reasonable course of action, the Court noted that Mr. Hart rejected two full time comparable jobs and decided to pursue a new career in a completely unrelated field in the real estate business. The Court noted the evidence established that the real estate business is

extremely risky. The Court also noted that even if it accepted that Mr. Hart was traumatized by the dismissal to such an extent that he could never return to the same industry (a similar argument to that raised by the plaintiff in this case), his choice must still be reasonable. It concluded that, in light of the risks associated with a real estate career and Mr. Hart's age, lack of financial resources, and experience or contacts in the industry, it was doubtful this choice of work could be considered a reasonable alternative for him.

[112] Importantly, however, the Court in *Hart* also noted:

> [48] In assessing mitigation efforts, personal preferences are a factor to consider and no one is compelled " to pursue one life-time career" : *Battell* at para 20. *Even where the new career takes time to establish and has costs associated with retraining, a dismissed employee may be held to have properly mitigated in the circumstances if the evidence as a whole establishes he or she acted reasonably. In each case it is a question of fact.*
>
> (emphasis added)

[113] The plaintiff relies upon *Forshaw,* where the Court of Appeal decided that the plaintiff had acted reasonably by refusing to consider other employment and, instead electing to start a new business venture. In that case, at page 6, the Court of Appeal said:

> That "duty"—to take reasonable steps to obtain equivalent employment elsewhere and to accept such employment if available—is not an obligation owed by the dismissed employee to the former employer to act in the employer's interests. It would indeed be strange that such a duty would arise where an employer has breached his contractual obligation to his employee, having in mind that no duty to seek other employment lies on an employee who receives proper notice.
>
> The duty to "act reasonably", in seeking and accepting alternate employment, cannot be a duty to take such steps as will reduce the claim against the defaulting former employer, but must be a duty to take such steps as a reasonable person in the dismissed employee's position would take in his own interests—to maintain his income and his position in his industry, trade or profession. The question whether or not the employee has acted reasonably must be judged in relation to his own position, and not in relation to that of the employer who has wrongfully dismissed him. The former employer cannot have any right to expect that the former employee will accept lower-paying alternate employment with doubtful prospects, and then sue for the difference between what he makes in that work and what he would have made had he received the notice to which he was entitled.

[114] The plaintiff also refers to *Hetherington v. Saskatchewan Liquor and Gaming Authority,* 2020 SKQB 110, and others for the proposition that taking a risk to start one's own business venture does not mean the employee has failed to mitigate. As noted in that case:

> [122] Finally, in *Brake*, Gillese J.A. for the court observed at para. 94 there "is no magic formula that an employee must follow when making reasonable efforts to obtain other employment, and thereby mitigate his or her loss". She went on to hold:
>
> > …A terminated employee is entitled to consider her own long-term interests, so she will not fail to mitigate merely because she chooses to take some career risks that might not minimize the compensation that her former employer will owe to her: *Peet v Babcock & Wilcox Industries Ltd.* (2001), 2001 CanLII 24077 (ON CA), 53 OR (3d) 321 (CA), at para 8.

Application of the Legal Principles

[115] The question of whether an employee has failed to mitigate is a question of fact and requires an analysis of the circumstances. In addition, it is evaluated from the perspective of the employee who is not tied to the industry she had just worked. The question of whether the employee has acted reasonably must be judged in relation to her own position, and not in relation to that of the employer who has wrongfully dismissed her.

[116] In this case, unlike that of *Hart*, the evidence establishes that Ms. Parolin made fulsome efforts to start a business in an industry she is very familiar with in both of her first endeavours. I do not consider the jurisprudence to establish that one needs business training or a degree in business before one can start a business.

[117] I note that, while Ms. Parolin's initial efforts in small residential development were not successful due to a number of factors, none of these were issues alien to Ms. Parolin's experience. Ms. Parolin quickly moved to the creative interior design idea. She appears to have industriously explored this with professionalism. She ultimately received advice that the technology was not quite ready for the idea, and pivoted to the Tech Safe Kids venture. This venture appears robust, and while it is not at the stage of providing income, it is not an idle venture.

[118] It is evident from all the above that it was reasonable, in these particular circumstances—which demonstrate robust efforts with a potential of success—for the plaintiff to start her own business.

[119] I conclude, therefore, that the defendant has not met its onus to establish the plaintiff failed to mitigate her damages.

4. Is Ms. Parolin entitled to punitive damages because of Cressey's conduct?

[120] The plaintiff seeks an award of $50,000 on the basis that the May 10, 2023 meeting "smacked of bad faith". She alleges that the defendants implemented a secrete plan to exit her from her employment, and that Mr. Kendall then told her to take her objection to the owner of the business, who was the architect of the plan. Ms. Parolin asserts that an award of punitive damages is needed to deter employers from engaging in bad faith practices that target the exclusion of women from the workforce.

[121] The plaintiff relies upon the jurisprudence setting out when an award of punitive damages will be made. This jurisprudence was canvassed by the Court of Appeal in *Yates v. Langley Motor Sport Centre Limited*, 2022 BCCA 398:

> [67] The standard of review for an award of punitive damages is rationality. See *Chhina v. Rebecca L. Darnell Law Corporation*, 2021 BCCA 430 at paras. 40–41:
>
> > [40] While these submissions raise questions of law and principle, the Supreme Court of Canada, in *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130, described a standard of review regarding punitive damages based on rationality:
> >
> > > [197] Unlike compensatory damages, punitive damages are not at large. Consequently, courts have a much greater scope and discretion on appeal. The appellate review should be based upon the court's estimation as to whether the punitive damages serve a rational purpose. In other words, was the misconduct of the defendant so outrageous that punitive damages were rationally required to act as deterrence?
> >
> > [41] Applying this standard requires the facts to relate to the underlying purposes of punitive damages, described as follows in *Hill*:

> [196] Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency. Punitive damages bear no relation to what the Plaintiff should receive by way of compensation. Their aim is not to compensate the Plaintiff, but rather to punish the defendant. It is the means by which the jury or judge expresses its outrage at the egregious conduct of the defendant. They are in the nature of a fine which is meant to act as a deterrent to the defendant and to others from acting in this manner. It is important to emphasize that punitive damages should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence.
>
> [68] The question is whether punitive damages were "rationally required" to act as deterrence. They should be ordered "only in exceptional cases and with restraint": *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 69. Courts have maintained a high bar for when punitive damages would be a rational response to defendants' conduct.

[122] In my view, the facts in this case have not been established to be sufficiently egregious to merit an award of punitive damages. As noted above, punitive damages should be ordered only in exceptional cases. While I conclude the plaintiff was treated poorly by her employer, I do not find that this was done with malice, but rather with a careless, dismissive attitude.

[123] While it can and was argued that this conduct demonstrated bad faith, there is simply insufficient evidence to establish more than a careless and dismissive attitude. Punitive damages are only awarded where conduct is malicious and oppressive. Without that, punitive damages cannot be awarded.

[124] In order to be efficient in this case, the plaintiff to her credit, excised certain portions of her claim and evidence that were pertinent to the question of whether the bad faith could be established. That evidence was accordingly not before the Court. It would therefore be a stretch to conclude malice and award punitive damages in this case.

[125] Finally, I award costs in this case to the plaintiff as per the normal course, unless a party files an application seeking otherwise. That application should however be filed no later than 30 days following the date of this judgement.

"Burke J."