IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Silva v. Kensington Community Centre Association,* 2025 BCSC 1563

Date: 20250814
Docket: S231409
Registry: Vancouver

Between:

Carolyn Silva

Plaintiff

And

Kensington Community Centre Association, Bradley Tamplin, Satbir Dhillon, Beverley Gajsek, Margaret Law, Virginia Lew, Eddie Wong, Joyce Wong, Jesse Johl, Bruno Baronet, Jasmine Bhander, Susana Chong, Ray Goldenchild, Milan Kljajic, Raymond Li, Natasha Prahst, Amarpreet Randhawa, Jaskaran Rathore, and Wei Jie Zhang also known as Grant Zhang

Defendants

Before: The Honourable Justice Branch

Reasons for Judgment

Counsel for the Plaintiff:	J. Trueman N. Baker, Articled Student
No further appearances	
Place and Date of Hearing:	Vancouver, B.C. June 10, 2025
Written Submissions Received:	June 24, 2025
Place and Date of Judgment:	Vancouver, B.C. August 14, 2025

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I. INTRODUCTION

[1] This is an application to assess the damages payable by the defendant, Kensington Community Centre Association ("KCCA"), in this wrongful dismissal action following the entry of a default judgment.

II. FACTUAL BACKGROUND

A. Employment

[2] Ms. Silva was employed by the KCCA as its office manager for 26 years until September 1, 2020. Her contract was oral.

[3] She generally worked on a full-time basis, with some variation in her weekly hours. At the time her employment ended, Ms. Silva's wage was $27.59 per hour, 10% in lieu of benefits, and 3 weeks' vacation. She received reimbursements of approximately $1,200 per year for her phone and $180 for transportation. She had the opportunity to earn a year-end bonus, which amounted to $1,000 in each of the years 2016, 2017, and 2018.

[4] Her income fell over the COVID-19 period. However, given that the KCCA was preparing to relaunch its programs in September 2020, Ms. Silva estimates that her income for the balance of 2020 would have recovered to 2019 levels. Specifically, she estimates that her compensation from September 2020 onwards would have been as follows:

	per month	per year
Wages	$4,483.38	$53,800.50
10% of wages in lieu of benefits	$448.34	$5,380.05
Bonus	$83.33	$1,000.00
Reimbursement for the use of a personal mobile telephone	$100.00	$1,200.00
Reimbursement for personal automobile	$15.00	$180.00

3 weeks vacation (6%)	$295.90	$3,550.83
Total compensation	**$5,425.95**	**$65,111.38**

B. September 1, 2020 Dismissal

[5] Ms. Silva says that her employment effectively ended on September 1, 2020, when no funds were available to pay her. As a result of a governance dispute between two feuding groups, the KCCA's primary bank accounts had been frozen. Ms. Silva was never formally fired. In fact, several directors assured her that the KCCA's governance problems would be quickly resolved, which induced her to continue working.

[6] At the time of her dismissal, Ms. Silva was 58 years old, and had less than five years remaining until her planned retirement.

[7] During the period surrounding her termination, Ms. Silva was frequently ignored and excluded from matters that would normally have required her attention. Ms. Silva states that she was caught in the middle of improper demands for KCCA funds made by members of competing board factions. The faction known as the "Johl Board", which claimed to govern the KCCA during her dismissal, is alleged to have failed to communicate appropriately and professionally with Ms. Silva. She also provides evidence that they made unfounded accusations of insubordination.

[8] Ms. Silva says all this confusion caused her stress, worry, feelings of powerlessness, and a "sense of dread". Ms. Silva says that she repeatedly advised the competing "Tamplin Board" that KCCA's bank accounts needed to be unfrozen in order to secure her continued employment. While she was repeatedly assured that the power struggle was temporary and would soon be resolved, the funds to pay her eventually ran dry.

[9] The KCCA failed to pay Ms. Silva the basic statutory entitlements under the *Employment Standards Act,* R.S.B.C. 1996, c. 113.

[10] Following her dismissal, individuals purporting to run the KCCA provided statements to external organizations, such as the Park Board, that Ms. Silva was no longer an employee. Although Ms. Silva continued to perform work for the KCCA, a November 18, 2020, email from the Park Board states that they were advised by a lawyer representing the Johl Board that Ms. Silva was no longer an employee.

[11] On February 22, 2020, Ms. Silva received a call from the Vancouver Police Department asking about allegations by members of the Johl Board that she had committed “theft” in relation to the movement of certain KCCA funds. On September 13, 2021, the Johl Board brought a lawsuit against her and others alleging the “theft of monies” and “fraudulent conduct”. It claimed $250,000.00 against each of the defendants, including Ms. Silva. Since then, the KCCA has failed to drop the allegations against her, despite her requests and an alleged commitment to the Court to do so.

[12] Ms. Silva says that she suffered embarrassment because of this turmoil. She was unable to explain to friends, family, or prospective employers why her long-standing position had ended so abruptly. Ms. Silva’s evidence is that these events caused significant impacts on her life and health, including:

a) sleepless nights;

b) anxiety;

c) high blood pressure requiring medication; and

d) an inability to fully contribute to her children’s weddings due to the burden of defending the litigation against her.

C. Post-September 1, 2020 Work for the KCCA

[13] Ms. Silva performed at least 50 hours of work for the KCCA between September 2020 and January 2021, for which she was not paid. She performed this work “in good faith and out of [her] trust in the KCCA and the promises made to [her]

by its directors." These promises included the repeated assurances that the governance issues preventing her from being paid would be quickly resolved.

[14] Ms. Silva's post-termination work for the KCCA was limited to "essential functions," such as communicating with funders and the Park Board, telephoning parents to advise them that the childcare programs would not be reopening, and issuing and filing T4 slips for employees.

D. Efforts to Find New Work

[15] In addition to her work at KCCA over the years, Ms. Silva had also held other part-time roles. Starting in 2006, she worked as a cashier at the Vancouver Board of Parks and Recreation (the "Park Board"). Beginning in 2016, she worked as a childcare programmer at the Killarney Community Centre ("Killarney"). After her September 2020 termination from the KCCA, Ms. Silva reached out to her contacts at these organizations, hoping to transition into a more substantial role with them. She was not successful, at least not initially.

[16] When it became clear that she would be unable to obtain comparable employment, Ms. Silva sought and obtained a part-time position with Elections BC. She also continued to pick up sporadic work with the Park Board and Killarney. Ms. Silva's hours at Killarney were significantly reduced in March 2020 due to COVID-19 closures, but she returned to her earlier levels in 2021. At the Park Board, Ms. Silva obtained sporadic work as a cashier and as a cleaning and sanitation worker.

[17] Starting in September 2021, Ms. Silva was offered a regular part-time role as a cashier at the Park Board. This guaranteed her 20 hours per week, and she picked up additional hours on top of that.

[18] Ms. Silva had the following sources of income from 2019 to 2022:

Employer	**2019**	**2020 (with September termination)**	**2021**	**2022**
KCCA	$61,524.24	$34,139.98	$0.00	$0.00

Killarney	$21,714.92	$11,180.33	$21,392.75	$29,367.30
Park Board	$17,491.80	$21,033.69	$13,816.89	$61,601.86
Elections BC	$0.00	$3,013.92	$0.00	$0.00
Total	**$100,730.96**	**$69,367.92**	**$35,209.64**	**$90,969.16**

E. The Governance Action

[19] The KCCA has not operated since Ms. Silva's dismissal due to the governance dispute discussed above, which is the subject of the proceeding *Kensington Community Centre Association v. Kensington Friendship Society*, BCSC Vancouver Registry, file no. S-218098 (the "Governance Action").

[20] Due to the governance dispute, the KCCA's main account at the Vancouver City Savings Credit Union ("Vancity") remains frozen. Currently, approximately $200,000 is being held in favour of the present claim pursuant to an order made on April 14, 2023. At the time of that order, an Annual General Meeting was believed to be imminent. However, no meeting has been held due to ongoing disputes between the factions. I continue to issue orders aimed at bringing the two factions together for a meeting to determine who should have control of the KCCA on a going-forward basis.

[21] There is some overlap between the proceedings, as the Governance Action effectively seeks control of KCCA's available funds (the "Residue"), which Residue will also need to be used to satisfy any judgment in the present action. In terms of the size of the Residue, Ms. Silva's evidence, corroborated by affidavits filed in the Governance Action, is that the KCCA has approximately $700,000 remaining, less some recent expenses.

[22] The available evidence suggests that both factions in the Governance Action intend to wind down the KCCA and redirect its funds to other causes. The key issue in the Governance Action is who shall control that final distribution.

F. The Silva Action

[23] The present wrongful dismissal action (the "Silva Action") was commenced on February 28, 2023. The KCCA's directors, purported directors, and their legal counsel have had notice of the action since that time. On January 20, 2025, this Court granted a substitutional service order to ensure that all named parties were properly engaged. Ms. Silva discontinued her claim against the individual defendants on March 3, 2025.

[24] On April 14, 2025, with no Response filed by the KCCA, this Court granted default judgment. Somewhat surprisingly, given the material effect that this claim will have on the Residue, no one has applied under s. 103 of the *Societies Act,* S.B.C. 2015, c. 18, to defend this action in the name and on behalf of the KCCA.

[25] Although the KCCA failed to respond to the present claim, counsel for Ms. Silva served counsel for both rival factions in the Governance Action with the present application, along with the individual directors or purported directors in accordance with an order for substitutional service. Notice was also given to Vancity. No defendant appeared on this application.

III. ISSUES

[26] The core issue on this application is the quantum of damages to be awarded to Ms. Silva. Embedded within this are seven sub-issues:

a) Can damages be properly and summarily assessed on the available affidavit evidence?

b) General damages: What is the length of the reasonable notice period, and have the damages been mitigated?

c) Unpaid wages: What amount does the KCCA owe Ms. Silva for the work performed after effective termination without pay?

d) Aggravated damages: Does the KCCA owe Ms. Silva anything to compensate her for the mental distress she suffered because of its breach of the duty of good faith and fair dealing in the manner of termination?

e) Punitive damages: Should the KCCA be required to pay Ms. Silva anything to achieve the objectives of denunciation, deterrence, and retribution for their conduct?

f) Prejudgment interest: What amount must the KCCA pay to Ms. Silva on account of prejudgment interest?

g) Costs: Should increased costs be awarded? Should costs be assessed summarily by the Court?

[27] Ms. Silva seeks the following award:

Head of damages	**Amount sought**
General damages	$130,222.77
Unpaid wages	$1,600.22
Aggravated damages	$40,000.00
Punitive damages	$100,000.00
Prejudgment interest	$30,006.89
Costs	$12,359.72
Total	**$314,189.60**

IV. ANALYSIS

A. Assessment of Damages

[28] Pursuant to Rule 3-8(13) of the *Supreme Court Civil Rules,* a plaintiff who has obtained a default judgment may apply to the court to assess damages on affidavit evidence. Following an application, the court may determine the damages summarily, order a further assessment, inquiry, accounting, or trial, or make any other order to further the object of the *Supreme Court Civil Rules*.

[29] In *McHugh v. Cameron*, 2022 BCSC 2405, Justice Gaul considered when it was appropriate to summarily assess damages on affidavit evidence. In that case, the plaintiff had obtained a default judgment after the defendant had failed to construct and deliver a home as promised. The allegations included breach of contract, misrepresentation, and unjust enrichment. Justice Gaul referred to cases under the previous virtually identical Rule which held that assessment on affidavit evidence was appropriate where: (1) the amount of damages involved is relatively small; (2) the plaintiff can depose to the matter; (3) the affidavit material in support has been served upon the defendant who has not contested the matter; and (4) the judgment would not be "patently unjust": at paras. 46-47. Justice Gaul held that an assessment based on affidavit evidence was appropriate, given that the amounts involved were relatively small, the evidence was clear and straightforward, making the assessment largely a mathematical calculation, and the defendants were provided with the necessary materials: paras. 48-53.

[30] I find that it is appropriate to assess damages under Rule 3-8(13) in this case based on the affidavit evidence. The amounts involved, while not necessarily small, are not sufficiently large to justify a trial. Ms. Silva has provided significant detail and supporting evidence in her affidavits regarding her role, compensation, and manner of dismissal. Ms. Silva has notified all previous defendants of this application, and none appeared to contest the assessment. I have previously found it appropriate to assess damages for wrongful dismissal in similar circumstances: *Cvjetkovich v. Breezemax Web (Ca) Ltd*., 2024 BCSC 808 at paras. 32-57.

B. General Damages

[31] I agree that Ms. Silva was constructively dismissed. A fundamental term of every employment contract is that the employer pays the employee the agreed wages for work performed. When it became clear that funds would no longer be made available for her salary, she accepted that her employment was at an end. In more formal terms, she accepted the KCCA's repudiation of the employment contract: *Leong & Associates Actuaries & Consultants Inc. v. Watt,* 2003 BCSC 1885 at paras. 188-189.

[32] General damages for wrongful dismissal are based on the implied obligation in every employment contract to give reasonable notice of termination, unless the employer has cause to terminate without notice. When an employer fails to provide reasonable notice, the employee can sue for breach of this implied term: *Honda Canada Inc. v. Keays,* 2008 SCC 39 at para. 50 [*Honda*].

[33] Ms. Silva's contract with the KCCA did not specify a reasonable notice period. Therefore, notice is determined according to the common law. Common law notice primarily considers the following non-exhaustive factors: (1) the nature of employment; (2) length of service; (3) age; and (4) the availability of similar employment, taking into account the employee's experience, training, and qualifications: *Bardal v. Globe & Mail Ltd.* (1960), 24 D.L.R. (2d) 140 (ONSC) at p. 145.

1. Character of Employment

[34] Ms. Silva was the most senior employee at the KCCA, reporting directly to the elected Treasurer. She was responsible for managing day-to-day operations for the KCCA, a non-profit community association, which included:

a) grant writing;

b) human resources management, including hiring and supervising summer students and childcare staff;

c) payroll administration and accounting management;

d) inventory management; and

e) administering KCCA programs, activities, and events, including its Preschool and Out of School care programs.

2. Length of Service

[35] As a general principle, employees are entitled to reasonable notice of roughly one month of notice per year of service: *Hoem v. Macquarie Energy Canada Ltd.*, 2025 BCSC 446 at para. 135.

[36] Ms. Silva began her employment with the KCCA in spring 1994 and worked there until August 2020. Therefore, her total tenure was 26 years. According to the general rule, Ms. Silva would be entitled to 26 months' notice. However, there is also a rough upper limit of 18-24 months, unless there are exceptional circumstances: *Ansari v. B.C. Hydro & Power Auth.*, 2 B.C.L.R. (2d) 33, 1986 CanLII 1023 (BCSC) at para. 39. Ms. Silva was willing to accept a 24-month upper limit in this case.

[37] In Ms. Silva's case, her long service to a single employer made it more difficult to find new work. She was generally only familiar with KCCA's particular environment, cast of characters, and financial arrangements. Her bookkeeping skills were tailored to the KCCA's specific requirements.

3. Age

[38] Ms. Silva was 58 years old as of September 1, 2020. She had planned to retire within approximately five years.

[39] Advancing years are a significant factor because age has a substantial impact on the prospects for similar employment: *Ansari* at para. 27.

[40] Common sense dictates that employers would likely be more reluctant to invest the time and energy in employing an older person, given the shorter period

between hiring and retirement: *Wilson v. Pomerleau Inc.,* 2021 BCSC 388 at paras. 26-28.

4. Availability of Alternative Employment

[41] Since the purpose of wrongful dismissal damages is to provide the dismissed employee with sufficient time to find new employment, the availability of alternative employment is a crucial factor.

[42] Within the consideration of this factor, several sub-factors arise in Ms. Silva's case:

a) The specialized nature of the industry in which Ms. Silva worked: It is generally recognized that the specialized nature of an employee's industry, skills or responsibilities can make comparable employment harder to find: *Ansari* at paras. 23-24 and 75; *Zheng v. China Southern Airlines Company Limited*, 2023 BCSC 1763 at paras. 53, 63. For example, in *Wright v. Chilliwack Community Services*, 2000 BCSC 972, the court awarded a notice period of 12 months after less than four years of service, recognizing the lack of alternative employment opportunities in the non-profit sector for a chief executive officer: para. 28.

b) The impact of the COVID-19 pandemic, especially on employment based on community gatherings: *Escobar v. Ocean Pacific Hotels Ltd.,* 2024 BCSC 1575 at paras. 65, 91.

c) The allegations of theft and fraud: These could reasonably be expected to limit Ms. Silva's employability in bookkeeping and financial management roles. It would be challenging for Ms. Silva to secure employment as a bookkeeper or in any financial management capacity while these allegations remain unresolved. She realistically assumed that she would be required to disclose the allegations to any prospective employer.

d) Most importantly, the *actual* length of time required by Ms. Silva to secure new employment. In situations where the claimed notice period has elapsed by the time of trial, it is legitimate to consider evidence of the length of time the dismissed employee *actually* required to find a new job: *Saalfeld v. Absolute Software Corporation*, 2009 BCCA 18 at para. 16.

5. Comparison with Similar Cases

[43] Ms. Silva relied upon several authorities. The most relevant were:

a) *Whiting v. Boys and Girls Club Services of Greater Victoria*, 2011 BCSC 681, where a 57-year-old program manager for a registered charity with 13 years of service was awarded a notice period of 18 months.

b) *Borsato v. Atwater Insurance Agency Ltd*., 2008 BCSC 724, where a 52-year-old office manager with 16 years of service was awarded a notice period of 16 months less one month for failure to mitigate properly.

c) *Brien v. Niagara Motors Limited*, 2008 CanLII 41823 (ONSC), O.J. No. 3246, where a 51-year-old office manager with 23 years of service was awarded a notice period of 24 months.[1]

[44] Based on these authorities, Ms. Silva submits that she is entitled to 24 months' notice. I agree that this is reasonable considering the factors outlined above and the case law guidance.

6. Calculation of Ms. Silva's Wrongful Dismissal Damages

[45] I now turn to calculating the precise damages payable for the wrongful dismissal based on the 24-month notice period.

[1] At trial, the plaintiff was awarded an additional two months notice due to the bad faith conduct of the defendant, but this was overturned on appeal: 2009 ONCA 887 at para. 3.

[46] In *Ostrow v. Abacus Management Corporation Mergers and Acquisitions*, 2014 BCSC 938, Justice Watchuk summarized the proper approach for calculating such damages:

> [114] The law is well settled with regard to compensation to be given to an employee who has been wrongfully dismissed. In *Nygard Int. Ltd. v. Robinson* (1990), 1990 CanLII 1991 (BC CA), 46 B.C.L.R. (2d) 103 (C.A.) at 107, Justice Southin stated that, "compensation, that is to say, damages for the breach are what the innocent party would have received or earned depending on the nature of the contract had it been performed according to its terms" (Also see *Saalfeld* at paras. 20 and 36). The dismissed employee is "entitled to be treated, for remedial purposes, as if he were an employee throughout the notice period" (*Gillies v. Goldman Sachs Canada Inc*., 2001 BCCA 683, at para. 20; and *Hawkes v. Levelton Holdings Ltd*., 2013 BCCA 306 at paras. 67-73 [*Hawkes*]).
>
> [115] In calculating damages in a case of wrongful dismissal, the issue is what the employee would have been entitled to had they remained employed by the employer during the notice period. This will include any salary payable to the employee during this time. It will also include all benefits, including a bonus, to which the employee would have been entitled (*Martell v. Ewos Canada Ltd*., 2005 BCCA 554, at paras. 26 and 27 and *Hawkes* at paras. 72-73 and 76). The employer is also required to compensate an employee for the amount of money paid to replace lost benefits during the notice period: *Sorel v. Tomenson Saunders Whitehead Ltd*. (1987), 1987 CanLII 154 (BC CA), 15 B.C.L.R. (2d) 38 (C.A.) [*Sorel*].

[47] Generally, the salary an employee would have received during the notice period is determined based on their salary at the time of termination. However, if the plaintiff's earnings at termination are not representative of their usual earnings, a court may look to the preceding years to determine a "representative income": *Davidson v. Tahtsa Timber Ltd*., 2010 BCCA 528 at para. 17.

[48] Ms. Silva submits that her basic wrongful dismissal damages should be calculated as follows:

	per month	**per year**
Wages	$4,483.38	$53,800.50
10% of wages in lieu of benefits	$448.34	$5,380.05
Bonus	$83.33	$1,000.00

Reimbursement for the use of a personal mobile telephone	$100.00	$1,200.00
Reimbursement for personal automobile	$15.00	$180.00
3 weeks vacation (6%)	$295.90	$3,550.83
Total	**$ 5,425.95**	**$65,111.38**

i. Wages and Wages in Lieu of Benefits

[49] Ms. Silva provided two pay stubs covering the periods September 27, 2019, to October 10, 2019, and October 11, 2019, to October 24, 2019. Each paystub shows a bi-weekly gross pay of $2,069.25 in wages (75 hours at $27.59) and an additional 10% of $206.93. This is the basis upon which Ms. Silva calculates the wages and “10% of wages in lieu of benefits” portion of her compensation. Converting these numbers to annual figures, the total yearly gross wages are $53,800.50 ($2,069.25 x 26) and the 10% of wages in lieu of benefits is approximately $5,380.18 ($206.93 x 26).

[50] It is appropriate that Ms. Silva recover for both wages and the additional 10% provided in lieu of benefits. Both formed part of her compensation and total gross income that she would have been entitled to in the notice period absent termination.

[51] Ms. Silva’s salary fell in 2020 for reasons unrelated to her performance. In 2020, she earned a gross income of $34,139.98 by the end of August, which translates to approximately $4,267 per month. This is lower than the $4,931.72 per month ($4,483.38 for wages + $448.34 for 10% wages in lieu) that Ms. Silva seeks. However, Ms. Silva states that although her income was lower in 2020, it would have increased significantly from September to December 2020, as the KCCA was in the process of reopening following the COVID-19 shutdowns. Given this, she submits that if she had remained employed after August 2020, her income would have returned to 2019 levels. I agree that this is a reasonable assumption and approach.

ii. Other Benefits

[52] To recover for lost benefits, an employee must adduce evidence that they suffered a loss during the notice period due to the absence of the benefits: *Shalagin v. Mercer Celgar Limited Partnership*, 2022 BCSC 112 at para. 94. This applies to reimbursement for expenses, such as where the employer reimburses an employee for their vehicle costs: *Thoma v. Schaefer Elevator Components Inc*., 2019 BCSC 100 at paras. 29-32.

[53] In relation to Ms. Silva's claim for reimbursement of phone and vehicle expenses, there is no evidence that Ms. Silva incurred expenses for the traditionally reimbursed portion during the notice period, nor is there evidence of the employer agreeing to cover her personal use of these items before her employment came to an end. Presumably, her business-related costs ended when there was no longer any business to conduct. Given this, she has failed to demonstrate that she incurred a loss due to the absence of the reimbursement by her employer.

iii. Vacation

[54] A similar analysis applies to vacation pay; an employee can only recover damages if they can demonstrate they lost the opportunity to take a vacation in the notice period: *Virk v. Satnam Education Society of B.C*, 2020 BCSC 149 at para. 119.

[55] There is adequate evidence to establish that Ms. Silva lost the ability to take a vacation during the notice period. Her evidence shows that following termination, she continued to work, both unpaid for KCCA, and at Killarney, the Park Board, and Elections BC. Ms. Silva states that following her termination, she has been unable to travel or take time off work, as she needs to be available for any job opportunities that arise. As such, I find that Ms. Silva is entitled to compensation for the vacation she would have received had she not been terminated.

iv. Loss of Bonus

[56] In *Ostrow,* Justice Watchuk discussed when an employee is entitled to compensation for loss of a bonus following termination:

> [121] In order to receive compensation for the loss of a bonus, the employee must establish that they would have been entitled, through contract or past conduct, to receive the bonus, as well as showing the basis on which to calculate the amount of any such bonus: *Szczypiorkowski v. Coast Capital Savings Credit Union*, 2011 BCSC 1376 at para. 72 and *Ellerbeck v. KVI Reconnect Ventures Inc*., 2013 BCSC 1253 at para. 60 [*Ellerbeck*].
>
> [122] In *Gillies v. Goldman Sachs Canada Inc.*, 2000 BCSC 355 (affirmed on appeal on this point, 2001 BCCA 683 at paras. 41-42), the court held that damages should be awarded for bonuses earned during the notice period if the employee demonstrates that the bonus was an integral part of the employee's compensation (at para. 62). The court then listed four factors, at para. 63, that are helpful in determining whether this is the case in a particular situation:
>
> 1) A bonus is received each year although in different amounts;
> 2) Bonuses are required to remain competitive with other employers;
> 3) Bonuses were historically awarded and whether the employer had never exercised his discretion against the employee; and
> 4) The bonus constituted a significant component of the employee's overall compensation.

[57] Ms. Silva says that she earned a $500 bonus in 2015 and a $1,000 bonus in the years 2016-2018. Ms. Silva does not mention whether she was awarded a bonus in 2019.

[58] The emails notifying Ms. Silva of her bonus in 2016-2018 include that the bonus is being provided "as a token of appreciation".

[59] Applying the factors from *Ostrow,* I find that the bonus was not an "integral" part of Ms. Silva's compensation. The bonus was not paid every year according to a standard formula, and there is no evidence that a bonus was required for KCCA to remain competitive. Additionally, the bonus constituted only a minor part of Ms. Silva's overall compensation. Finally, the emails suggest that the bonus was being provided gratuitously, rather than as a material element of Ms. Silva's regular pay.

[60] Based on these findings, Ms. Silva's damages for wrongful dismissal are $5,227.62 per month ($4,931.72 for wages and 10% in lieu of benefits + $295.90 for vacation). Over the 24-month notice period, this totals $125,462.88 before mitigation and other possible deductions are considered.

7. Mitigation and Associated Deductions

[61] Following dismissal, a plaintiff has a general obligation to mitigate their damages. If successful, their damages are reduced. This reduction is applied even in the context of a default judgment: *Sams v. BCG Logistics (2000) Inc*., 2021 ONSC 1343 at para. 18. Ms. Silva initially argued that mitigation and the failure to mitigate are defences that must be specifically pleaded by a defendant, and hence could not be applied in the default judgment context. At the request of the Court, Ms. Silva provided further submissions on the application of these principles in the default judgment context. Ms. Silva now accepts that the Court can reduce her award on account of mitigation income earned, but argues that it is not appropriate to do so in this case.

[62] Not all income earned following termination is deducted from an award. If an employee was already working a second job before termination, and continues that second job after termination, only income earned in replacement of their primary job is deducted from the award. Income from the second job that could have been earned while continuing with the primary job is considered supplemental income and is not deductible: *Pakozdi v. B & B Heavy Civil Construction Ltd*., 2018 BCCA 23 at paras. 45-46.

[63] In *Pakozdi,* the appellant worked additional hours at his secondary consulting job following dismissal. Justice Hunter calculated the plaintiffs' replacement income as follows:

> [65] The reduction for avoided loss cannot be calculated with precision. Drawing the line between that portion of earnings in the notice period that is properly to be regarded as replacement income and that portion that should be regarded as a continuation of his supplementary income cannot be done in an exact way.

> [66] Justice Pitfield described this task more generally in *Wilson v. UBS Securities Canada Inc*., 2005 BCSC 563 at para. 63:
>
> > The computation of damages in a wrongful dismissal case is not a mathematical calculation but an assessment of that which would likely have been earned had the proper period of working notice been provided to the employee.
>
> [67] I propose to make an assessment on that basis, having regard to the evidence that was led concerning Mr. Pakozdi's consulting income before and after dismissal.
>
> [68] The evidence indicates that Mr. Pakozdi was able to engage in consulting work for as much as 96 hours in October 2014 without apparently interfering with his duties at B & B. This work generated $9,600 for that month, in addition to his earnings with B & B. Thus, it seems reasonable to assume that in the five month notice period, Mr. Pakozdi could have earned as much as $50,000 in what can be characterized as supplementary income. The balance of his earnings can reasonably be regarded as replacement income and thus deductible from his damage claim.

[64] I accept that Ms. Silva worked diligently to obtain replacement employment, but with little initial success. However, the reality is that she did receive some income during the 24-month notice period that went beyond the level of side work she has performed previously.

[65] As noted above, the following chart shows Ms. Silva's employment income over the relevant years.

Employer	2019	2020	2021	2022
KCCA	$61,524.24	$34,139.98	$0.00	$0.00
Killarney	$21,714.92	$11,180.33	$21,392.75	$29,367.30
Park Board	$17,491.80	$21,033.69	$13,816.89	$61,601.86
Elections BC	$0.00	$3,013.92	$0.00	$0.00
Total	**$100,730.96**	**$69,367.92**	**$35,209.64**	**$90,969.16**

[66] Beginning with the Elections BC income, Ms. Silva's evidence is that she sought out this short-term role following termination to replace her income with KCCA. Given this, the $3,013.92 in income she earned is properly deductible from her award as replacement income.

[67] Regarding her work with Killarney and the Park Board, in 2019 (before her dismissal), Ms. Silva was paid a total of $39,206.72 for these additional efforts. In 2020 and 2021, she was paid less than this amount. I consider the income she earned from these sources up to 2022 to be supplemental income that she would reasonably have earned if still employed at KCCA.

[68] In 2022, Ms. Silva's total income from Killarney and the Park Board reached $90,969.16. This is $51,762.44 more than she received in her previous highest earning year, being 2019. The Court must determine what portion of this amount constitutes supplemental income that she could have received while still working at KCCA in any event, and what portion properly constitutes replacement income that must be deducted from her award.

[69] Beginning with her work for Killarney, Ms. Silva's income increased from $21,714.92 in 2019 to $29,367.30 in 2022. Ms. Silva reports that she worked approximately 15 hours per week in 2019, compared to an average of 17.5 hours per week from January to September 2022. Ms. Silva argues, and I agree, that this modest increase in hours worked constitutes supplemental income that she could also have earned while employed at KCCA.

[70] Looking at the Park Board work, Ms. Silva's income increased from $17,491.80 in 2019 to $61,601.86 in 2022. Ms. Silva reports that she worked an average of 11.5 hours per week in 2019 and an average of 38.5 hours per week from January to September 2022. Ms. Silva says, however, that although she worked only 11.5 hours a week in 2019, she had the capacity to work up to 17 hours a week. As evidence, she points to one pay period in September 2019 where she worked 16.8 hours each week.

[71] The difficulty with this submission is that I cannot consider her alleged excess capacity for work at the Park Board in isolation from her work capacity for Killarney. During the pay period in September 2019, Ms. Silva worked only 13.5 hours a week at Killarney, allowing her extra time to work at the Park Board. Given that I have already accepted that Ms. Silva had the ability to work an additional 2.5 hours per

week at Killarney while employed by the KCCA, I find it appropriate to accept only the 11.5 hours per week as Park Board income that should not be deducted from her award.

[72] I must calculate the non-deductible income Ms. Silva could have earned at the Park Board during the 2022 portion of her 24-month notice period. I find that Ms. Silva could have worked approximately 402.5 hours between January 2022 and September 2022 (35 weeks x 11.5 hours) if she had continued to be employed by the KCCA. This yields potential earnings of $12,500.76.[2] Over this 2022 period, she actually earned approximately $42,003.17.[3] The $29,502.41 difference constitutes deductible replacement income.

[73] Therefore, Ms. Silva's initial damages for wrongful dismissal must be reduced by $32,516.33 on account of mitigation ($3,013.92 from Elections BC and $29,502.41 from the Park Board). This reduces her wage loss damages award from $125,462.88 to $92,946.55.

[74] Ms. Silva relies on a concurring judgment in *Brake v. PJ-M2R Restaurant Inc*., 2017 ONCA 402, where Justice Feldman states in *obiter* that "where a wrongfully dismissed employee is effectively forced to accept a much inferior position because no comparable position is available, the amount she earns in that position is not mitigation of damages and need not be deducted from the amount the employer must pay": para. 158. Ms. Silva argues that since her work at the Park Board was "not remotely comparable to her work at the KCCA", the Court should decline to consider it mitigation income. As Ms. Silva concedes, this approach has not been expressly followed in British Columbia. Further, I find that Justice Feldman's reasoning is not applicable to this case. In 2022, Ms. Silva worked as a cashier at the Park Board, a role she had held since starting there in 2006. This is not a situation where a terminated employee was "forced to accept a much inferior

[2] (402.5 hours x $27.98 per hour) + $1238.81 constituting 11% in lieu of benefits
[3] Ms. Silva's documents cover the period January 2022 to September 8, 2022, and show total earnings of $43,191.22. Given that the last pay period covers the first week of September, which falls outside of the notice period, I have only considered half of this pay period for the purposes of this calculation.

position", but instead a one where an employee expands their existing (and presumably acceptable) role at a second job to compensate for termination at their primary job.

C. Unpaid Wages

[75] Ms. Silva is entitled to compensation for work performed after the end of her employment based on assurances that the KCCA's governance issues would be resolved and she could return to her job. She values her work at the same rate of pay as she received prior to termination, for a total of $1,600.22.

[76] This work clearly benefitted the KCCA. Among other things, the KCCA was spared penalties under the *Income Tax Act* that it would have been liable to pay had Ms. Silva not filed the KCCA's T4 slips on time. There is no evidence of any other reason for Ms. Silva to perform work for the KCCA without pay. She was not a volunteer or a director. She had been an employee since 1994.

[77] I find that, subject to the double-recovery problem identified below, this claim would be justified under principles of unjust enrichment. It may also have been payable based on contract principles, but I find it unnecessary to conclude that a new contract came into being given my conclusion below.

[78] I conclude that accepting any claim for post-termination damages creates a double-recovery problem. Ms. Silva is already going to receive compensation for the wages that she should have earned over this period. The award of wrongful dismissal damages covers the same period. Put another way, Ms. Silva will not suffer a deprivation for her post-termination work because, through the basic notice period award made above, she will effectively be compensated for such work.

D. Aggravated and Punitive Damages

[79] In employment law, aggravated damages typically arise from an employer's breach of the implied duty of good faith and fair dealing in the manner of termination. These are sometimes known as "*Wallace* damages" after the Supreme Court of Canada's decision in *Wallace v. United Grain Growers Ltd.*, 1997 CanLII 332, [1997]

3 S.C.R. 701, which first recognized this duty. In *Wallace*, Justice Iacobucci explained the rationale for such damages as follows:

> [95] The point at which the employment relationship ruptures is the time when the employee is most vulnerable and hence, most in need of protection. In recognition of this need, the law ought to encourage conduct that minimizes the damage and dislocation (both economic and personal) that result from dismissal. In *Machtinger*, *supra*, it was noted that the manner in which employment can be terminated is equally important to an individual's identity as the work itself (at p. 1002). By way of expanding upon this statement, I note that the loss of one's job is always a traumatic event. However, when termination is accompanied by acts of bad faith in the manner of discharge, the results can be especially devastating. In my opinion, to ensure that employees receive adequate protection, employers ought to be held to an obligation of good faith and fair dealing in the manner of dismissal, the breach of which will be compensated for by adding to the length of the notice period.

[80] The Supreme Court in *Wallace* observed that “injuries such as humiliation, embarrassment and damage to one’s sense of self-worth and self-esteem might all be worthy of compensation depending upon the circumstances of the case”: *Wallace* at para. 103.

[81] In *Honda*, the Supreme Court refined the approach in *Wallace*. Instead of extending the notice period, the Court confirmed that the proper way to treat this claim is as a separate head of damage:

> [59] … The amount is to be fixed according to the same principles and in the same way as in all other cases dealing with moral damages. Thus, if the employee can prove that the manner of dismissal caused mental distress that was in the contemplation of the parties, those damages will be awarded not through an arbitrary extension of the notice period, but through an award that reflects the actual damages.

[82] Aggravated damages can arise from employer conduct during and after termination, so long as the conduct is relevant to the dismissal: *O.W.L. (Orphaned Wildlife) Rehabilitation Society v. Day*, 2018 BCSC 1724 [*O.W.L*] at para. 286.

[83] In *Bailey v. Service Corporation International (Canada) ULC*, 2018 BCSC 235, Justice Griffin (as she then was) helpfully summarized the applicable principles for an award of aggravated damages in the employment context:

> [205] The Court of Appeal recently discussed aggravated damages in the context of an employment case in *Lau v. Royal Bank of Canada,* 2017 BCCA 253 [*Lau*]. From *Lau* and the authorities it cites including the leading Supreme Court of Canada cases of *Wallace v. United Grain Growers Limited*, 1997 CanLII 332 (SCC), [1997] 3 S.C.R. 701, 152 D.L.R. (4th) 1 [*Wallace*], and *Honda Canada Inc. v. Keays*, 2008 SCC 39 [*Honda*], a number of principles emerge:
>
> 1. A person's work is a significant aspect of a person's life, key to self-worth.
>
> 2. Employers have an obligation of good faith and fair dealing in the manner of dismissal of an employee. This includes refraining from conduct that is untruthful, misleading or unduly insensitive (*Wallace* at paras. 95 and 98).
>
> 3. When the employment relationship ends, the employee is vulnerable and some upset can be expected. Normal upset that can be expected is not compensable. However, aggravated damages resulting from the manner of dismissal are available if they result from conduct that is unfair or in bad faith (*Honda* at paras. 56, 57).
>
> 4. Examples of facts which can give rise to aggravated damages include but are not limited to conduct that is untruthful, misleading or unduly insensitive. Other conduct in which aggravated damages may be awarded include maintaining wrongful allegations of dishonest conduct; misrepresenting the reason for the termination; and firing an employee who is on disability leave (*Lau* at para. 31).
>
> 5. Aggravated damages are compensatory based on foreseeable injury for breach of the duty of good faith and fairness. Because of this there must be some evidence that the manner of dismissal (as opposed to the mere fact of dismissal) is the cause of damaging effects on the dismissed employee, whether mental distress or intangible effects such as damage to reputation (*Lau* at paras. 54, 59-60, 62).
>
> 6. Medical evidence is not necessary to award aggravated damages based on mental distress caused by the manner of dismissal but there must be some evidence that transcends ordinary upset or distress (*Lau* at para. 49). This can include evidence from the employee or from family members or friends.

[84] In *Lau*, our Court of Appeal reviewed the prerequisites to awarding aggravated damages for mental distress and intangible effects. For mental distress, there is no requirement to provide medical evidence or prove a recognized psychiatric illness, although the plaintiff must show harm beyond the ordinary upset that accompanies termination. In *Lau,* the fact that the appellant had a "horrible feeling" and felt "lost" upon termination was not sufficient to ground an award for

aggravated damages: paras. 45-57. Regarding intangible effects, and loss of reputation, the Court stated as follows:

> [59] "Intangible" impacts in the nature of enhanced difficulty in obtaining new employment due to the manner of dismissal can be awarded in a wrongful dismissal action … While these damages are awarded under the same rubric as damages for mental distress, mental distress is a not [sic] a prerequisite. Whether awarded for mental distress or other tangible or intangible harm arising from the manner of dismissal, these damages are awarded based on the *Hadley v. Baxendale* principle: *Honda* at para. 59.
>
> [60] To support an award of aggravated damages for intangible effects, the evidence must demonstrate not only harm to the claimant but also a linkage between the manner of dismissal and the alleged harm...
>
> [61] General difficulty in obtaining new employment as a result of dismissal is compensated through the notice period, as re-employability is one of the factors used to determine the period of reasonable notice… Such general difficulty in obtaining re-employment is not compensable by *Honda* damages.
>
> [62] Where the damages are sought for loss of reputation, the manner of termination must be accompanied by three additional conditions: "(a) the employee's reputation is damaged by public knowledge of false allegations relating to the termination, (b) the employer fails to take reasonable corrective steps and offers no reasonable excuse for such failure, and (c) the damage to the employee's reputation has impaired his ability to find new employment": *Tipple* (C.A.) at para. 16.

[85] As noted, Ms. Silva seeks punitive damages on top of any aggravated damages award. In *Honda*, Justice Bastarache explained the distinction between aggravated and punitive damages in employment cases:

> [62] … Damages for conduct in the manner of dismissal are compensatory; punitive damages are restricted to advertent wrongful acts that are so malicious and outrageous that they are deserving of punishment on their own. This distinction must guide judges in their analysis.

[86] More recently, our Court of Appeal clarified that punitive and aggravated damages are independently available, and the same underlying conduct can ground both aggravated and punitive damages without being duplicative. Compensatory (aggravated) damages are awarded first, and punitive damages would only be necessary if the total award is not yet sufficient to achieve the goals of denunciation, deterrence, and retribution: *Ojanen v. Acumen Law Corporation,* 2021 BCCA 189 at paras 73-75.

[87] The court in *Ojanen* summarized the factors that should be considered in relation to a claim for punitive damages:

> [78] In *Whiten* at para. 94, the Court set out the factors that should be taken into account when considering an award for punitive damages. The factors include:
>
> a) Punitive damages are the exception rather than the rule, imposed only if there has been high-handed, malicious, arbitrary, or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour;
>
> b) Punitive damages are generally awarded only where the misconduct would otherwise be unpunished or where other penalties are unlikely to achieve the objectives of retribution, deterrence, and denunciation;
>
> c) Punitive damages are awarded only if compensatory damages (which to some extent are punitive in nature) are insufficient to accomplish these objectives, and the amount awarded is no greater than necessary to rationally accomplish their purpose;
>
> d) The purpose of punitive damages is not to compensate the plaintiff, but to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened;
>
> e) Punitive damages should be assessed in an amount reasonably proportionate to the harm caused, the degree of the misconduct, the plaintiff's relative vulnerability, and any advantage or profit gained by the defendant, having regard to any other fines or penalties suffered by the defendant; and
>
> f) Moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.

[88] Although it is often said that punitive damages require "an actionable wrong," the Supreme Court of Canada made clear in *Honda* that this does not require an independent tort, and a breach of the contractual duty of good faith can qualify as an independent wrong: *Honda* at para. 62.

[89] Aggravated and punitive damages should be assessed independently, for two reasons. First, the amount awarded in respect of aggravated damages is relevant to the assessment of whether punitive damages should be awarded and, if so, in what amount. Second, separate assessments facilitate appellate review because the reasoning followed by the judge in relation to each category is available to the

reviewing court, and because the standard of review is different: *Café La Foret Ltd. v. Cho*, 2023 BCCA 354 at paras. 61-63.

[90] In support of her claim for aggravated and punitive damages, Ms. Silva relies on the following factors:

a) Her difficult position in the middle of demands for the payment of KCCA funds made by members of competing board factions;

b) The refusal of the Johl Board to communicate appropriately and professionally with her;

c) The unfounded accusations of insubordination;

d) The failure of KCCA directors to unfreeze KCCA's bank accounts when they knew, or should have known, that this would impact the ability of KCCA to pay her;

e) The failure to notify Ms. Silva formally that her employment was terminated;

f) The KCCA's statements to outside organizations, such as the Park Board, that Ms. Silva was no longer an employee, when it had failed to give her any formal notification of the end of the employment relationship;

g) The KCCA's failure to pay statutory entitlements under the *Employment Standards Act*;

h) The KCCA's failure to pay her for work performed after termination, despite the promises of several KCCA directors;

i) The police report filed by the Johl Board on behalf of the KCCA, claiming that she had committed "theft";

j) The lawsuit brought against her by the KCCA, which alleges “theft of monies” and “fraudulent conduct,” and which claims $250,000.00 against her personally;

k) The embarrassment of being unable to explain to friends, family, or prospective employers why her long-standing position ended so abruptly; and

l) The failure of the KCCA to drop its allegations of “theft of monies” and “fraudulent conduct,” despite promises to the Court and a direct request to do so.

[91] In terms of the effects on Ms. Silva, she states that the manner of dismissal took a “significant toll” on her health and continues to affect her well-being to this day. She says she experienced stress, sleeping problems, ongoing anxiety, and developed high blood pressure, which requires medication. She points to the shock and devastation she felt following the allegations of “theft” and “fraud” reported to the police and levelled against her in the lawsuit. She notes that these allegations have prevented her from applying for bookkeeping positions and continue to haunt her years later.

[92] I accept that these factors collectively meet the requisite test for an award of both aggravated and punitive damages. The KCCA failed to uphold their obligation of good faith and fair dealing when dismissing Ms. Silva. Further, I find that the KCCA’s conduct can be described as “high-handed, malicious, arbitrary, or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour”: *Ojanen* at para. 78. In particular, one of the most egregious wrongs an employer can commit is falsely accusing the dismissed employee of wrongdoing, particularly when the alleged wrongdoing impugns the honesty or integrity of the employee. Justice Finch noted this in his concurring opinion in *Deildal v. Tod Mountain Development Ltd*., 1997 CanLII 4076 (BCCA), 33 B.C.L.R. (3d) 25:

> [125] … Employees seeking new positions offer their skill, knowledge, industry, and integrity. If they must present themselves under the cloud of a

> false allegation of dishonesty, they are greatly disadvantaged. Few employers would risk hiring an employee with a reputation for having embezzled huge sums of money from the previous employer. That damages should be awarded in lieu of a much longer than normal notice is entirely reasonable. The additional award therefore of $50,000 [in 1995 dollars; $93,371 in 2025 dollars] for increased difficulty in finding new employment may properly be regarded as aggravated damages.

[93] The pursuit of litigation against Ms. Silva is also a key factor supporting both awards: *Griffon Integrated Security Technologies et al. v. Valley Associates Inc. et al.,* 2023 ONSC 2200 at paras. 19-21; *Ojanen* at paras. 79-81; *Ruston v. Keddco MFG. (2011) Ltd*., 2019 ONCA 125 at para 17.

[94] I expressed some initial concern at the hearing regarding how the disputed governance of the KCCA should affect this analysis, i.e., whether it is proper to attribute misconduct by one faction or another to the KCCA itself. However, given that:

a) all of the misconduct was purportedly done in the name of the KCCA by persons with apparent authority to speak for the KCCA; and

b) counsel for each faction were given notice of the steps in this proceeding and never sought to intervene to advance this argument;

it is reasonable to treat the conduct outlined above as conduct of the KCCA for the purposes of this head of damage.

[95] Given that the standard is met for both types of award, the next task is to determine the appropriate quantum for aggravated damages. The Court will then consider whether a further punitive award is necessary.

[96] In terms of the quantum of the award for aggravated damages, I rely on the following authorities:

a) In *Deildal* at para. 107, the Court of Appeal upheld an award of $25,000 [in 1995 dollars; $46,835.80 in 2025 dollars] in aggravated damages for mental distress suffered as a result of the defendant's "outrageous and

reprehensible conduct." This was in addition to an award of 27 months notice ($110,00.00 in 1995 dollars).[4] The defendant had suddenly terminated the plaintiff, making unfounded and false allegations of serious misconduct, including theft. The manner of termination caused serious mental distress to the plaintiff causing him to suffer "a form of nervous breakdown", lose substantial weight, and required him to leave town: paras. 32, 65.

b) In *Zheng v. China Southern Airlines Company Limited*, 2023 BCSC 1763, the defendant placed the plaintiff on sudden administrative leave without reason and following a "biased and inadequate investigation" terminated the plaintiff for misconduct. There was no merit to the allegations. The Court found that the defendant acted in a callous and humiliating manner, made baseless allegations against the plaintiff, threatened legal proceedings, and damaged the plaintiffs' reputation. The Court found that the defendant's actions were highly blameworthy, abusive, and appeared to be part of a "pattern of firing senior employees without notice". The manner of termination caused the plaintiff to suffer from depression, anxiety, suicidal thoughts, and to have trouble eating and sleeping. The plaintiff was prescribed anti-depressant medication: paras. 71-86. Ultimately, the Court awarded the plaintiff $98,832.75 in general damages, $35,000 in aggravated damages, and $75,000 in punitive damages.

c) In *O.W.L.*, the employer wrongfully terminated the employee relying on factually inaccurate reasons and subsequently sued the employee baselessly alleging that they had misappropriated funds. The employer continued to maintain their misappropriation claim during the litigation until abandoning it at the start of closing arguments: paras. 1-8. The Court

[4] In *Deildal,* both Justice Braidwood and Justice Finch agreed that the $135,000 award should be upheld but categorized the damages differently. Justice Braidwood held that the award was constituted of $110,000 in general damages and $25,000 in aggravated damages for mental suffering: paras. 99, 107. On the other hand, Justice Finch found that aggravated damages should make up $75,000 of the total award, with $50,000 for the increased difficulty in finding new employment and $25,000 for mental distress: para. 131.

found that the employer's treatment of the plaintiff was callous, insensitive, and significantly impacted the plaintiff. There was no medical opinion evidence and the plaintiff's losses were partially caused independently by the loss of a family member and the illness of another: paras. 288-290. Ultimately, the Court awarded the plaintiff $41,424 in general damages and reimbursement for lost benefits, and $30,000 in aggravated damages: para. 304.

d) In *Ojanen*, the employee articling student was publicly terminated, reported to the Law Society, and sued by her employer based on unjustified allegations of misconduct. The trial judge found that the probable consequence of the firing and related actions was to render her unemployable in the legal profession while the allegations were outstanding: paras. 25-34. The manner of the dismissal caused her to suffer "profound emotional consequences" including depression, anxiety, humiliation, an inability to focus, irritability, and loss of appetite: para. 33; see also trial judgment 2019 BCSC 1352 at paras. 132-136. At trial, the employee was awarded $18,934 in general damages and $50,000 in aggravated damages. On appeal, the general damage award was increased to $118,934, the $50,000 aggravated damages claim was maintained, and punitive damages of $25,000 were awarded: para. 81.

[97] Ms. Silva seeks an aggravated damage award of $40,000. A more appropriate figure is $30,000. I accept that Ms. Silva has suffered compensable damages due to the manner of dismissal. The KCCA's failure to deal honestly with Ms. Silva during the termination, and the false allegations of dishonesty brought against her, caused Ms. Silva mental distress and enhanced difficulty in obtaining new employment. That said, I find the effect on Ms. Silva, while serious, is less severe than those suffered by the employees in *Deildal* and *Zheng*. I find that the situation in *O.W.L.* is more analogous. I note that part of the damages stemming from the difficulty in finding new employment following the KCCA's allegations

already forms part of the general damages award, as this challenge justified a longer notice period.

[98] Moving to the quantum of punitive damages, I find that the approved award of $122,946.55 (general damages of $92,946.55 plus aggravated damages of $30,000) is insufficient to hold the KCCA accountable for the full weight of its offensive conduct. This Court must send a clear message to employers that allegations of theft and fraud should not be made lightly or for ulterior motives against current or former employees. In this case, I accept that the KCCA's actions have caused significant stigma to fall upon Ms. Silva both personally and professionally. A substantial punitive damages award is the Court's primary tool for denouncing and punishing this behaviour and to ensure that it is deterred going forward. I note that the evidence is that the KCCA will still retain material reserves even after payment of the global amount awarded to Ms. Silva, and that there are currently no operational programs or activities requiring funding.

[99] That said, I find that such an award should be controlled, as it appears that the theft allegations made were largely the result of Ms. Silva being swept up in a broader shotgun pleading, rather than her necessarily having been specifically targeted. Further, the Supreme Court of Canada in *Whiten v. Pilot Insurance Co.,* 2002 SCC 18 at para. 94 suggests that a moderate award of punitive damages is generally sufficient, given that it will "inevitably carry a stigma in the broader community". I would award $40,000 rather than the $100,000 claimed. I find that such an award is appropriate given that the blameworthy conduct was not as targeted as in *Zheng,* where $75,000 in punitive damages were awarded. The award is higher than in *Ojanen,* where the punitive damage award was only $25,000. In *Ojanen,* the Court noted that the punitive damage award would have been higher absent the roughly equivalent $118,934 award for loss of earnings and the higher $50,000 award for aggravated damages: para. 80.

E. Prejudgment interest

[100] Ms. Silva is entitled to prejudgment interest on her general (wrongful dismissal notice period) damages and punitive damages. Prejudgment interest is not applicable to aggravated damages, nor costs: *Court Order Interest Act*, R.S.B.C. 1996, c. 79. However, the Court of Appeal has expressly held that prejudgment interest applies to punitive damages: *Mustaji v. Tjin,* 1996 CanLII 1907 (BCCA), 25 B.C.L.R. (3d) 220 at paras. 44-50.

[101] Based on the Court's calculation, this means that Ms. Silva is entitled to prejudgment interest on $132,946.55 of her total judgment ($92,946.55 in general damages and $40,000 in punitive damages). Ms. Silva requested that the Court summarily calculate the appropriate prejudgment interest based on the prevailing Court Order Interest Rates for the various periods since her cause of action arose. I calculate that Ms. Silva is entitled to $17,699.21 on account of prejudgment interest. If the plaintiff believes that any mathematical error has been made, they have leave to seek a further attendance or deliver a letter with a proposed corrected amount when submitting the final order for entry.

F. Costs

[102] As the successful party, Ms. Silva is entitled to costs.

[103] Ms. Silva seeks costs at Scale B at 1.5 times the usual value per unit. Furthermore, she asks that costs be assessed summarily by the Court. In total, Ms. Silva seeks $8,500.80 in costs and $3,858.92 in disbursements for a total of $12,359.72.

[104] The *Supreme Court Civil Rules*, Appendix B, s. 2(5) provides that:

> If, after it fixes the scale of costs applicable to a proceeding under subsection (1) or (4), the court finds that, as a result of unusual circumstances, an award of costs on that scale would be grossly inadequate or unjust, the court may order that the value for each unit allowed for that proceeding, or for any step in that proceeding, be 1.5 times the value that would otherwise apply to a unit in that scale under section 3 (1).

[105] What constitutes “unusual circumstances” or an award that is “unjust or grossly inadequate” is a fact-based inquiry driven by the nature of the litigation and the conduct of the parties: *Bajwa v. British Columbia Veterinary Medical Assoc.*, 2008 BCSC 905 at para. 73. Misconduct is not required to award increased costs: *Chandler v. Rasmussen*, 2013 BCSC 1461 at paras. 43-45.

[106] Ms. Silva asserts that there are several unusual circumstances in this case that justify increased costs:

a) As the future status–or even existence of–the KCCA was unknown, Ms. Silva had to draw pleadings against, and serve, all the directors and purported directors of the KCCA.

b) Because the KCCA’s Annual General Meeting appeared to be imminent in April 2023, Ms. Silva was compelled to apply for a *Mareva* injunction to ensure that the KCCA’s funds were not dissipated before her employment claim could be dealt with. This application cost approximately $20,000 in legal fees.

c) The KCCA’s failure to hold its Annual General Meeting as directed by the Court caused Ms. Silva’s employment claim to drag on for several years.

d) The fact that I was seized with the “affairs of the Association” meant that applications for substituted service (ordinarily heard in regular chambers) and default judgment (ordinarily obtained from the registrar) had to be scheduled before me.

e) Because Ms. Silva’s interests came into conflict with those of her co-defendants in the Governance Action, her employment lawyer had to take over her defence in that action as well.

f) Because the KCCA is in default, this matter proceeded by way of an application for assessment of damages, rather than by trial. While this

provided efficient use of court time, it required the preparation of a lengthy affidavit without the units available for preparation and attendance at trial.

g) Ms. Silva's draft bill of costs seeks 46 units on Scale B. With the usual unit value of $110, this amounts to $5,667.20. At 1.5x the usual value ($165), the total is $8,500.80. Even this increased total is less than 10% of Ms. Silva's actual legal expenses to date in this proceeding.

[107] I accept that these factors qualify as unusual in the aggregate, and that they are sufficient to justify the increased costs claimed.

[108] Ms. Silva also seeks a summary assessment of costs by the Court. Rule 14-1(15) provides that a judge of this Court may award costs of a proceeding, and in awarding those costs, "the court may fix the amount of costs, including the amount of disbursements".

[109] Costs are ordinarily assessed by the registrar, due to the registrar's extensive knowledge and experience assessing legal bills. However, a judge has the discretion to assess costs, which should be exercised sparingly: *Gichuru v. Smith*, 2014 BCCA 414 at para 106. An exception to the general proposition arises in (at least) two situations:

a) when the judge is intimately familiar with the litigation, or

b) when the time and costs of a registrar's hearing cannot be justified.

See *Gichuru* at para. 107.

[110] I accept that both criteria are met in this case.

[111] This entire proceeding has been conducted before me. I am intimately familiar with both this action and the related Governance Action.

[112] The relatively small amount of costs claimed does not justify the expense of a Registrar's hearing. Indeed, it is likely that the actual legal costs of preparation for

and attendance at a registrar's hearing would exceed the total amount of costs claimed.

[113] Furthermore, there is no participating defendant in this case, so the procedural fairness concerns expressed in *Gichuru* do not apply. The sole question is whether the submitted bill of costs is reasonable. I accept that it is.

V. CONCLUSION

[114] In summary, I award damages as follows:

General damages:	$92,946.55
Unpaid wages:	$0
Aggravated damages:	$30,000
Punitive damages:	$40,000
Prejudgment Interest:	$17,699.21
Costs:	$12,359.72
Total Award:	$193,005.48

[115] In terms of the order, a draft was prepared by Ms. Silva in anticipation of it being served upon Vancity. It directs Vancity to pay out this Court's judgment, and to liquidate any guaranteed investment certificates or term deposits necessary to provide the required cash. I accept that such terms are reasonable.

[116] The draft order also contains provisions to dissolve the freezing order made April 14, 2023, after the judgment funds have been paid to Ms. Silva. Provision has been made to have the "unfreezing orders" entered in both actions, to serve them upon counsel in the Governance Action, and to dispense with the signatures of the counsel who appeared at the freezing application hearing in 2023.

I find that the draft order is appropriate, with the caveat that it should be updated to reflect the assessed damages above. Further, while it is appropriate to dissolve the freezing order made April 14, 2023, I direct that the order be amended to state that nothing in the order requires Vancity to unfreeze any KCCA accounts that it has otherwise frozen or suspended internally. Vancity froze KCCA's accounts following the governance dispute, and, since that dispute has not yet been resolved, I find it necessary to confirm that nothing in the order requires that those accounts be completely unfrozen.

"The Honourable Mr. Justice Branch"