

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Taylor v. British Columbia*,
2026 BCSC 1047

Date: 20260608
Docket: S192747
Registry: Victoria

Between:

Wendy-Lou Taylor

Plaintiff

And:

His Majesty the King in Right of British Columbia

Defendant

Before: The Honourable Justice LeBlanc

Reasons for Judgment

Counsel for the Plaintiff:

J.M. Hutchison, K.C.

Counsel for Defendant:

L.J. Zivot
J.C. Fu

Place and Date of Hearing:

Victoria, B.C.
January 12–16, 19–23, 2026,
January 26–29, 2026
April 16, 2026

Written Submissions from the Plaintiff:

February 6, 26, 2026

Written Submissions from the Defendant:

February 13, 2026

Place and Date of Judgment:

Victoria, B.C.
June 8, 2026

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Introduction

[1] Following a 30-year career with the defendant, the plaintiff was terminated from her employment without cause on June 29, 2017. The plaintiff was paid the maximum severance available to her pursuant to the *Employment Termination Standards*, BC Reg 379/97.

[2] Prior to her termination, the plaintiff was part of the team (the “Investigation Team”) that was tasked with investigating an alleged data breach within the Ministry of Health (“MOH”). That investigation garnered widespread media and public attention resulting in the Select Standing Committee on Finance and Government Services referring the MOH investigation and resulting terminations to the Ombudsperson for a review. The Ombudsperson released its report on April 6, 2017, entitled “Misfire: the 2012 Ministry of Health Employment Terminations and Related Matters” (the “Misfire Report”).

[3] The plaintiff alleges that she, along with the other members of the Investigation Team, were treated unfairly and that she was terminated in bad faith and for political gain.

[4] The crux of the plaintiff’s claim is that she was made a scapegoat for the provincial government with respect to the MOH terminations.

[5] The plaintiff seeks general, aggravated and punitive damages. The plaintiff also seeks indemnity for legal costs she incurred relating to the Misfire Report and other government investigations.

[6] The defendant denies the plaintiff’s allegations concerning her termination and submits that it has met its severance obligations to the plaintiff. The defendant’s position is that there was no bad faith in the manner in which the plaintiff was terminated.

Evidentiary Issues**Document Agreement & Use of the Misfire Report**

[7] The parties have entered into a document agreement. That agreement provides, in part, as follows:

4. All documents set out in the Index are deemed to have been authenticated and may be put into evidence by a party. The Court is not required to review or consider any of the Documents until they are referred to by a party and sought to be admitted into evidence. At that point, the parties may make submissions about whether the Document is admissible for the purpose it is being tendered.
6. This Agreement does not in and of itself constitute an admission as to the truth or contents of any Document, except where expressly stated in the Agreement.
14. Unless otherwise proven and admitted under Rule 11-6, opinions contained in a Document are admissible only for the purpose of determining that the opinion was made and recorded, but not for the truth of the opinion.
15. Statements recorded in a Document are admissible for the fact that they were made but not for their truth.
16. Some documents in the index are transcripts of interviews. Subject to a party challenging the accuracy of such transcript the questions and answers given are those made and answered in accordance with that record.
17. The report of the Ombudsperson entitled: Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters: Referral Report No 1, April 2017 to the Legislature Assembly of British Columbia, is, subject to direction of the Court, to be admitted and used in compliance with the provisions of the *Ombudsperson Act* RSBC 1996 C. 340.

[8] Section 28 of the *Ombudsperson Act*, RSBC 1996 C. 340 provides that proceedings of the Ombudsperson must not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction. Accordingly, I agree with the defendant that the procedural steps taken by the Ombudsperson are not judicially reviewable in this action. In any event, the plaintiff does not seek judicial review of proceedings that led to the Misfire Report.

[9] The question that arises relates to the findings of the Ombudsperson, as summarized in the Misfire Report, and whether they are binding on me. The plaintiff

has asked the court to make certain findings of fact based on the evidence led in the trial and not in reliance on the Misfire Report, even where the findings sought may differ from the findings contained in the Misfire Report. I agree that is the appropriate approach to be followed.

[10] In *Ewert v. Canada (Attorney General)*, 2016 BCSC 962, a class action certification application, the court found that the investigative report conducted by the Office of the Correctional Investigator was not admissible for the proof of the facts stated in it, although it was helpful for placing otherwise asserted facts into context.

[11] The parties agree that the Misfire Report has been put before me to admit that the Ombudsperson has made findings, but not for the truth of those findings.

[12] Accordingly, the factual findings herein will be based on an assessment of the evidence presented during the trial, even if those findings may differ from the findings contained in the Misfire Report.

Findings of Fact

[13] Below is a summary of the relevant facts.

Ministry of Health – Data Management Practices Investigation

[14] As of 2010, the plaintiff was the Director of Privacy Investigations. In that role, the plaintiff was responsible for supporting various ministries in identifying, reviewing and addressing privacy breaches. As Director of Privacy Investigations, the plaintiff worked closely with Legal Services Branch counsel.

[15] In late 2011 or early 2012, the plaintiff was contacted by then-Assistant Deputy Minister, MOH, Lindsay Kislock, to see if the plaintiff could assist in enabling information sharing with researchers and research projects within the MOH.

[16] Ultimately, the plaintiff was assigned to the MOH through a subcontractor agreement to assist with this project. A team was created, including the plaintiff, and the project commenced with a review of current agreements, practices, databases.

One of the main objectives of the review was to put processes in place that would reduce the wait to access MOH data for researchers. The plaintiff worked on the project for four months resulting in several recommendations and findings for improvement.

[17] Following the MOH project, in or about April 2012, the plaintiff was called into a meeting with Deputy Minister Kislock, then-Assistant Deputy Minister of Finance and Corporate Services, MOH, Manjit Sidhu, and then-Assistant Deputy Minister, MOH, Barbara Walman. The plaintiff was advised that the auditor general had received information from a whistleblower concerning information sharing practices in the MOH. The plaintiff was asked to work with three others to conduct a preliminary review concerning procurement and use of data in the Pharmaceutical Services Division of the MOH (the “Initial Examination”).

[18] The team was given 30 days to complete their work and report back to Deputy Minister Kislock, Deputy Minister Sidhu and Assistant Deputy Minister Walman. Early in the process, one of the members left the Initial Examination team.

[19] The Initial Examination involved reviewing relevant contract and financial documents, investigation into the data access stored and shared by parties, review of electronic communications between the parties, and interviews with related parties. Following information obtained in the Initial Examination, the MOH began a formal investigation in May 2012 (the “Formal Investigation”).

[20] I find that the plaintiff was identified in the internal communications as a lead investigator of the Formal Investigation. Although identified as a lead investigator, the plaintiff actually had limited involvement in decision making as the outcomes were being controlled by higher level decision makers. Further, there is some evidence to suggest that each team member was “lead” within their area of responsibility.

[21] In or about July 2012, the MOH was provided with the draft results of the Formal Investigation. Upon receipt, Deputy Minister Sidhu provided edits on the report. Among other recommendations, the team recommended that the Public

Service Agency (“PSA”) investigate a number of standard of conduct breaches identified.

[22] RCMP were contacted about the Formal Investigation, and they asked to be provided with all the information by September 19, 2012. The plaintiff testified that she notified government officials that the RCMP had not opened an investigation and that they were waiting for further documentation to be forwarded.

Notwithstanding that the plaintiff conveyed this information, government later reported that an RCMP investigation was ongoing. Given the manner in which this matter proceeded as described below, the RCMP never opened an investigation.

[23] On September 4, 2012, then-Deputy Minister Graham Whitmarsh reported to then-Minister of Health Michael de Jong advising that an investigation team had been established consisting of representatives from the Ministry of Labour, Citizens’ Services and Open Government through its Office of the Government Chief Information Officer, the PSA, and the MOH’s Financial and Corporate Services Division, Health Sector IM/IT Division and Organizational Development and Engagement Branch and that the team had been directed to report directly to him to remove any potential for conflict.

[24] Deputy Minister Whitmarsh further reported that seven staff members had been suspended without pay, and by September 3, 2012, he expected that five of those individuals would be terminated for cause (the “Termination Decision”). Deputy Minister Whitmarsh reported that the first phase of Formal Investigation would be completed by September 15, 2012, to ensure all evidence was prepared for transfer to the RCMP by September 19, 2012.

[25] On September 6, 2012, the MOH issued a press release containing, *inter alia*, the following information:

VICTORIA – The Ministry of Health has asked the RCMP to investigate allegations of inappropriate conduct, contracting and data-management practices involving ministry employees and drug researchers.

Health Minister Margaret MacDiarmid said today that the ministry has provided the RCMP with interim results of an internal investigation, which was supported by a lead investigator from the Office of the Chief Information Officer, Ministry of Citizens’ Services and Open Government ...

....

- Four employees have been terminated and three have been suspended without pay – and their access to ministry data and government assets has been frozen.

[26] I find that the Termination Decision was contrary to the recommendations provided by the plaintiff in her role as Director of Privacy Investigations. The plaintiff did not recommend any terminations. Her recommendation was for employee suspensions pending completion of the Formal Investigation, as the investigative work was still underway when the Termination Decision was made. In making this finding, I rely on the plaintiff's email communications and the unchallenged evidence of the plaintiff.

[27] During the Formal Investigation, more employee terminations occurred, and several research contracts were suspended or cancelled.

[28] Widespread media attention started in September 2012, corresponding with the filing of notices of civil claims by the terminated employees. Complaints concerning the fairness of the Formal Investigation also started to surface.

[29] Roderick MacIsaac was one of the employees terminated. On January 7, 2013, Mr. MacIsaac tragically took his own life.

Information and Privacy Commissioner for BC Report

[30] On June 26, 2013, Elizabeth Denham, Information and Privacy Commissioner for B.C., issued investigation Report F13-02: 2013 BCIPC No. 14.

[31] Her investigation looked into three breaches of personal health data for research purposes. The Privacy Commissioner concluded that the breaches happened because the Ministry failed to translate privacy and security policies into meaningful business practices and, at the time of the breaches, there was a lack of clear responsibility for privacy within the Ministry.

Deputy Minister of the Ministry of Health, Stephen Brown

[32] In June 2013, Stephen Brown replaced Graham Whitmarsh as Deputy Minister, MOH.

[33] The plaintiff testified to being called into then-Deputy Minister Brown's office, upon his appointment, for a briefing on the Formal Investigation. She attended the meeting along with then-Assistant Deputy Minister Kislock.

[34] Ms. Kislock's evidence concerning this meeting was consistent with the plaintiff's. The defendant did not challenge their evidence.

[35] Deputy Minister Brown explained that he had met a contractor at a party, who complained about the MOH Investigation. Deputy Minister Brown blamed the two for the difficulties the MOH was having in hiring. He also called the two "mean and horrible" and blamed them for treating the people they investigated horribly. The plaintiff left the meeting crying.

[36] The plaintiff testified that, at the meeting, she was not permitted to update Deputy Minister Brown on the Formal Investigation or give him information about it. He directed that the Formal Investigation would be stopped and a final report would not be prepared, something the Investigation Team was later criticized for.

[37] From this time until her termination, the plaintiff remained responsible for responding to FOI requests related to the Formal Investigation; participating in examinations for discovery related to the employee litigation; and providing support to the OCG's office concerning their ongoing investigation. The evidence establishes that the plaintiff was generally left to address these matters with minimal support and direction.

[38] The plaintiff was given limited access to legal counsel to prepare for the examinations and was subsequently criticized for her performance. In one example, legal counsel for the government told the plaintiff that the government had to settle because she was such a poor witness during the examination for discovery.

[39] Emails and documents corroborate the plaintiff's evidence that deputy ministers sought to distance themselves from the Formal Investigation as it continued to garner negative press.

[40] On September 18, 2013, the plaintiff was notified that her temporary lateral transfer to the MOH, Data Access & Sharing Investigation Unit was extended to March 31, 2014. Unlike prior similar letters, the plaintiff was not told who she was to report to.

Media Attention

[41] Media attention continued in 2013 and into 2014. The plaintiff was identified by name as the lead investigator. With the replacement of Deputy Graham Whitmarsh, the media reports turned their criticism to the Formal Investigation team. The Formal Investigation team was criticized by the media for the way they conducted investigations. In addition, the media implied that the plaintiff was responsible for the MOH terminations and the government reporting that the RCMP had commenced an investigation.

[42] On October 4, 2013, a spokesperson for the MOH is reported in the media as saying that the Formal Investigation report would be released in the upcoming weeks. No formal report was ever prepared on direction of Deputy Minister Brown.

[43] Through an FOI request, the media reported on an October 6, 2014 email purportedly authored by former-Deputy Minister Graham Whitmarsh. The media reproduced the following portions:

"The team that undertook the investigation was led by Sara Brownlee, a member of the staff at the PSA."

"The other lead investigator was Wendy Taylor from the [chief information officer's office]. Sara and Wendy were, to my knowledge, the only individuals who attended every meeting and employee interview."

"They collected all evidence and wrote all reports with respect to the entire investigation process. In addition, they drafted all the letters advising employees of disciplinary actions".

[44] With respect to the drafting of disciplinary letters, the plaintiff's uncontradicted evidence was that she was directed to draft the letters and played no part in the decision to terminate the MOH employees.

[45] While the plaintiff acknowledges that the defendant cannot control what is reported in the media, with respect to this issue, the defendant was issuing media releases intended to correct information reported about certain individuals while the plaintiff was not afforded the same considerations. This was notwithstanding the widespread media attention focussed on her.

[46] In particular, the plaintiff says that she was reported as being "the" lead investigator, when in practice she was part of a team and was not making critical decisions; that the fallout from the terminations was directed to her when she spoke out against it; and, she was associated with the dissemination of incorrect information concerning the involvement of the RCMP, when she had already advised her superiors that there was no RCMP investigation.

[47] The plaintiff approached her superiors and requested that they take steps to correct what was being reported in the media. The plaintiff reported that no substantive steps were taken.

[48] Although the plaintiff was contacted by media, she testified that it would not have been appropriate for her to speak to media as it would be a violation of her duties to her employer. As a government employee, all government statements were controlled by the government and she would not have been authorized to comment, even if it was to defend herself.

McNeil Investigation and Report (October - December 2014)

[49] In October 2014, then-Deputy Minister Brown and the then-head of the PSA engaged outside counsel, Marcia McNeil, to review the matters and process of the MOH Investigation that led to the MOH terminations.

[50] In an October 3, 2014 news release, Deputy Minister Brown is reported as having reviewed the terminations made in 2012 and determined that although serious breaches of policy occurred, some of the employment terminations were unwarranted or were considered excessive. It was further reported that settlements had been reached with three employees. The news release further reported that PSA had been asked to conduct a review of the steps taken to investigate the allegations of inappropriate conduct and practices, and the process taken to arrive at the decision. The PSA engaged Ms. McNeil to assist with the review.

[51] Ms. McNeil was asked to conduct a review of the public service response to allegations of inappropriate conduct in 2012 by MOH employees and report back. The review was sought by the PSA to improve both public service processes and procedures in conducting investigations into employee misconduct and the decision making that follows such investigations.

[52] Ms. McNeil made several findings and concluded that the Formal Investigation did not, at all times, follow established best practices (the “McNeil Report”).

[53] The plaintiff was interviewed twice in relation to the preparation of the McNeil Report.

[54] The plaintiff was not briefed or advised prior to the release of the McNeil Report.

[55] When the McNeil Report was issued, the plaintiff received a call on her cellphone from the media requesting comment.

Investigative Protocol Meeting

[56] Following release of the McNeil Report, the plaintiff was called to a training meeting on investigative protocols with senior members of government (the “Investigative Protocol Meeting”). During the meeting, presenters spoke about the

Formal Investigation and how it did not follow proper procedures. The plaintiff was not aware that she would be the subject matter of the training meeting.

[57] The plaintiff testified that during the Formal Investigation that she was in communication with her superiors to ensure that proper procedures as they existed at the time were being followed.

[58] When she was in the Investigative Protocol Meeting, she felt embarrassed and targeted with blame for the government previously having inadequate procedures. The plaintiff testified that a colleague commented to her that they were surprised she was still employed.

Memorandum of Understanding – November 1, 2013

[59] On November 1, 2013, the MOH, the Ministry of Justice (“MOJ”) and the plaintiff entered into a memorandum of understanding (the “MOU”) assigning the plaintiff from the MOH to MOJ. The terms of the MOU provided that the plaintiff would work full time with MOJ. However, any issues at the MOH requiring attention would take priority. Specifically, the plaintiff would be available for all matters related to the Formal Investigation, including follow up litigation, providing direct support to other members of the Investigative Team, and delivering the Evidence Informed Policy and Practice course to MOH staff.

[60] At the MOJ, the plaintiff reported to Assistant Deputy Minister, Liquor Control and Licensing Branch.

Calls for Public Inquiry

[61] In early 2015, the opposition party started calling for a public inquiry into the firing of the MOH employees and for misleading the public about a non-existent RCMP investigation.

Referral to Ombudsperson for Investigation – the Misfire Report

[62] By a motion made on July 29, 2015, and in accordance with special directions adopted on September 9, 2015, a referral to the Ombudsperson pursuant to s. 10(3)

of the *Ombudsperson Act* in relation to the MOH terminations was made by the Select Standing Committee on Finance and Government Services of the Legislative Assembly of British Columbia.

[63] The plaintiff received a summons to give evidence before the Ombudsperson on September 15, 2016. The plaintiff retained legal counsel and attended before the Ombudsperson as summoned.

[64] On February 17, 2017, the plaintiff received a draft and redacted portion of the Ombudsperson report for her review and comment in accordance with s. 17 of the *Ombudsperson Act*.

[65] On March 22 and 23, 2017, with the assistance of counsel, the plaintiff provided a comprehensive response to the draft. The response included over 200 comments. The plaintiff said only one of her suggested changes was incorporated.

[66] On April 6, 2017, the Ombudsperson released the Misfire Report. The Misfire Report recommended that the government issue apologies to the specific individuals affected along with *ex gratia* “goodwill” payments ranging from \$15,000 to \$125,000. In addition, it was recommended that an endowment fund in the sum of \$500,000 be created to honour the memory of Mr. MacIsaac.

[67] Kim Henderson, then-Deputy Minister to the Premier and head of the B.C. Public Service, announced that the government accepted all of the recommendations and would not rule out possible dismissals of those officials involved in the “flawed investigation”.

[68] An indemnity up to the sum of \$25,000 was made available for legal advice sought by those receiving notice pursuant to s. 17 of the *Ombudsperson Act*.

[69] The plaintiff received the full indemnity of \$25,000 for legal fees and seeks recovery in this action for the overage that she incurred. The statement of account put in evidence totaled \$49,200.24.

The Hancock Investigation

[70] Micheal Hancock of Harris & Company, LLP was retained by the PSA to investigate if there was just cause for discipline for any of the employees identified in the Misfire Report that were involved in the public service's overall response and to examine whether any of the identified employees displayed conduct which may impair the confidence of the employer including, but not limited to, a failure of leadership.

[71] On April 25, 2017, the plaintiff was notified that she was one of the employees that would be investigated. The letter sent to the plaintiff provided, in part, as follows:

The Employer has made no determinations as to whether there was any employee misconduct with respect to the 2012 Ministry of Health firings. However, the Employer is committed to ensuring that employees are accountable for their actions. As a result, please be aware that you could face discipline, up to and including dismissal, arising from the findings of the investigation if the Employer determines that your behaviour constitutes misconduct.

[72] The plaintiff retained counsel to represent her with respect to this investigation.

[73] Mr. Hancock's findings were reported to Deputy Minister Henderson and Lori Halls and John Davison of the PSA. No formal report was prepared.

The Leaked OCG Report and the McLean Investigation (February – March 2016)

[74] On February 25, 2016, the defendant became aware that an unredacted version of a June 2015 Investigative Report prepared by the Comptroller General regarding alleged contracting irregularities and conflict of interest in the MOH Pharmaceutical Division (the "OCG Report") was released to a Vancouver Sun reporter.

[75] A redacted version of the OCG Report had been previously made available to members of the public.

[76] The plaintiff received a copy of the OCG Report from Assistant Deputy Minister Kislock in a sealed envelope in a coffee shop. At the time, the plaintiff believed that she should have knowledge of the report as she was still involved in responding to FOI requests and litigation concerning the Formal Investigation. The plaintiff provided a copy of the OCG Report to Ms. Brownlee, as she was her co-investigator, and the plaintiff believed she should be aware of the information as well.

[77] On March 3, 2017, Ken McLean, who was the Senior Director, Investigations and Audits of the Corporate Information and Records Management Team at the time and Ainslie Avery, who was Manager, Investigations and Audits of the Corporate Information and Records Management Office at the time, were tasked with undertaking a privacy investigation arising from the release of the OCG Report.

[78] Pursuant to the terms of reference, this investigation was to:

- a) examine which government employees or other individuals may have had access to the OCG Report;
- b) examine whether the involved ministries and other bodies complied with the requirements of FOIPPA and applicable government policy in the storage and handling of the OCG Report; and
- c) issue forward-looking recommendations intended to prevent similar incidents from occurring in the future.

[79] Whether any government employee may have violated the *Standards of Conduct for BC Public Service Employees* was outside the scope of the investigation.

[80] The terms of reference separated the investigation into two phases with phase one's objective to establish how broadly the OCG Report was accessible within the government, and whether credible evidence existed to support conducting

investigative interviews with potential witnesses and respondents which would occur during phase two.

[81] Following phase one, the executive committee determined that interviews would be conducted as part of phase 2 of the investigation. Twenty individuals were interviewed, including the plaintiff. The interviews were conducted of those individuals the defendant identified as:

- a) having access to the OCG Report and had a discernible or perceived motive for releasing the OCG Report; or
- b) who had handled or interacted with the OCG Report in a manner that raised questions to whether access was required as part of their duties.

[82] In a final report dated March 10, 2016, Mr. McLean and Ms. Avery concluded that the source of the unauthorised disclosure could not be determined and that the OCG Report had been made accessible to 114 government employees. It was also determined that a defined number of individuals, including the plaintiff, collected and/or disclosed the OCG Report in a manner not authorized under the *Freedom of Information and Protection of Privacy Act* [FOIPPA]. Six recommendations were made to enhance government information controls.

[83] The plaintiff was interviewed on December 1, 2016, and February 8, 2017. At the first meeting, the plaintiff was advised that she was being interviewed as a witness only and the meeting was a fact-finding meeting only. During the second interview, the plaintiff was advised that the standards of conduct concerning her employment was outside the scope of the investigation. The plaintiff was advised that she could bring a support person to the meeting, but she declined.

[84] On February 16, 2017, the plaintiff was advised that Mr. McLean and Ms. Avery intended to find that she was not authorized under FOIPPA to receive the OCG Report or to disclose it to Ms. Brownlee.

[85] As the scope of this investigation did not include considering matters related to employee conduct, the PSA determined that it would conduct an HR investigation to determine if those involved breached the *Standards of Conduct for BC Public Service Employees*. Andrea Zwack was retained to conduct the examination.

Zwack Investigation: March – May 2017

[86] On March 14, 2017, Ms. Zwack contacted counsel for the plaintiff and advised that she had been retained by the PSA to conduct a human resources investigation into employment-related issues arising from possible mishandling by the plaintiff of the OCG Report.

[87] The purpose and scope of the investigation was to determine:

- a) If employee actions related to the collection and/or disclosure of the OCG Report violated the *Standards of Conduct for BC Public Service Employees* and/or other employment policies, directives or obligations; and
- b) The context surrounding employee actions that the employer should take into account when determining what, if anything, should be the appropriate response.

[88] With respect to the plaintiff's interview with Ms. Zwack, Ms. Zwack was in communication with Mr. Davison. A redacted email dated March 15, 2017 includes Ms. Zwack writing: "I can tell you this will be an interesting interview!" Mr. Davison responded with a message that asked Ms. Zwack to get the interview done as soon as possible.

[89] The plaintiff was interviewed on March 28, 2017.

[90] A redacted version of the Zwack Report has been put in evidence. The report is dated May 12, 2017. The redactions are voluminous. Based on what is before the court, it appears as though Ms. Zwack made the following conclusions:

- a) that while the plaintiff's receipt of the OCG Report from Ms. Kislock was not authorized under *FOIPPA*, the plaintiff held a genuine and reasonable belief that her receipt of the OCG Report was authorized and appropriate in all of the circumstances; and
- b) with respect to the plaintiff's disclosure of the OCG Report to Ms. Brownlee, the plaintiff was not authorized to disclose the OCG Report, and that doing so was a breach of *FOIPPA* and of the plaintiff's obligations as a public servant to keep information strictly confidential, and that she likely knew this at the time of disclosure.

Events Leading to Plaintiff's Termination

[91] It is not disputed that by mid-May 2017, the defendant had the information from the McLean, Zwack and Hancock investigations.

[92] On April 6, 2017, Kim Henderson, Deputy Minister to the Premier and Cabinet Secretary and Head of the B.C. Public Service was interviewed by the press. A portion of that interview is transcribed as follows:

Reporter: Is anybody currently in the employ of the civil service going to be disciplined or dismissed from employment as a result of the findings of the report?

Henderson: The Ombudsperson includes advice for us on that. Page 32 of the report suggests that there be no further recriminations, that the time for that is the past. I need to give that consideration.

....

Reporter: How would you characterize the conduct of the lead investigator, who is not named – his title is in there – as described by the Ombudsperson on a number of occasions?

Henderson: I agree with the characterization in the report and in Marcia McNeil's report but I think the kinds of terms used today was that it was completely unfair, that there was an utter failing of process and I agree with that.

Reporter: Following on what Keith asked, this unnamed lead investigator, there is one accounting there of an interview with rod MacIsaac, the poor guy who kills himself, who is forced 14 times to deny false accusations levelled by the interviewer. I'm surprised there would be any doubt that a person who conducted themselves that way, in that form, would not be fired. Why

wouldn't that person who behaved that way and has such awful consequences to fired?

Henderson: I think that the Ombudsperson had provided me with advice on that. Some of the advice that he includes in the report suggests that the time has long passed for that. I need to give that due consideration.

Reporter: But the McNeil report has been out for almost two years. Wasn't that enough of a sign that the person should be fired?

Henderson: The McNeil report was not designed, as this report points out, to be fault finding. So, we now have the findings of this report, quite a bit more detail on the role of the investigators. The Ombudsperson has not given us advice that there be no further recriminations and so I need to consider that.

Reporter: a statute of limitations on driving someone to their death?

Henderson: I need to give it consideration that he has advised us not to take any further action.

[93] Ms. Henderson in her testimony stated that she was not facing public pressure to terminate the plaintiff's employment; however, the above interview suggests otherwise.

[94] On June 26, 2017, Lori Halls, Deputy Minister of the BC Public Service, requested calculation of severance benefits for the plaintiff and was provided with the information that same day.

New Placement – New Job

[95] By early 2017, the plaintiff was the Executive Director employed in the Small Business and Red Tape Reduction Ministry and was performing in that role as her performance reviews below will describe.

June 29, 2017 – Date of Termination

[96] At 9:06 a.m. on Thursday, June 29, 2017, Lori Halls, Deputy Minister of the BC Public Service emails the plaintiff as follows:

Wendy

The employer requires your attendance at a meeting today at 4:15 pm. The meeting will be with myself and John Davison, Assistant Deputy Minister, Employee Relations and Workplace Health at BCPSA office at 810 Blanshard Street. Upon arrival, please check in with the front desk and I will come to greet you. Please respond to this email and confirm your attendance.

[97] As requested, the plaintiff attended at the BCPSA office at approximately 4:15 p.m. and was taken into an office where Mr. Davison was waiting. Ms. Halls entered the office and read from the following script; however, for reasons not explained, skipped over and did not read to the plaintiff the underlined portion:

Thank you for coming to meet with us today.

Wendy, the Deputy Minister to the Premier has decided to terminate your employment with the Government of British Columbia effective immediately.
The employer has decided that change is needed.

We are providing you with a lump sum payment of the severance you are owed under the *Public Sector Employers Act* as set out in the severance information package. The package describes the amount of severance payable.

We have here a letter signed by Kim Henderson, Deputy Minister to the Premier confirming the termination.

Confidential career and/or financial counseling support is available to assist in your transition from your current position to other employment.

Right now, I'm going to introduce you to NAME, an independent Career Transition Consultant whose services are confidential. They will explain their role and will be available to help you process what I've told you today.

[98] Ms. Halls then handed the plaintiff a letter and left the room. Mr. Davison subsequently left.

[99] The letter provided to the plaintiff was signed by Kim Henderson and advised her that her employment was terminated effective June 29, 2017, and she would be provided with a lump sum severance owed pursuant to the *Public Sector Employers Act*, as set out in the attached severance information package. The attached severance information package included an agreement and release and advised that severance will only be paid after return of the executed agreement and release. The agreement and release read in part as follows:

In consideration of the lump sum payment of \$207,407 and the terms and conditions of settlement set out herein, and in "Exhibit A", and other good and valuable consideration the sufficiency of which is not denied, I HEREBY REMISE, ACQUIT, RELEASE AND FOREVER DISCHARGE Her Majesty the Queen in Right of the Province of British Columbia, her Ministers and Ministries, and any and each of their affiliates, officers, directors, officials, servants, employees, contractors, agents, representatives, heirs, executors, administrators, assigns and successors (hereinafter referred to as the Releasee), from any and all manner of actions, causes of action, suits,

contracts, damages, debts, accounts, claims and demands whatsoever which I ever had, now have or hereafter can, shall or may have arising out of or in any way connected with my hiring, employment and/or the termination of my employment from the Government of the Province of British Columbia.

[100] The severance package included a lump sum payment for benefits. Accordingly, the defendant terminated the plaintiff's extended health care benefits effective June 30, 2017, while the plaintiff's son was using the extended health care benefits. At this time, it was defendant's position that payment of the severance funds was contingent on the plaintiff executing and returning the agreement and release.

[101] The plaintiff did not attend for financial or employment counselling advice as she had to drive to Duncan to take her daughter to a pre-scheduled sporting event.

[102] Shortly after the plaintiff's termination, at 4:30 on June 29, 2017, Ms. Henderson made a public announcement that the payments recommended in the Misfire Report had been made. That evening, a non-confidence vote was held on the floor of the Legislature resulting in Premier Clark's resignation and the NDP forming government.

[103] Although at trial, Ms. Henderson and Mr. Davison testified that the plaintiff was terminated due to a loss of confidence in her, the termination did not occur in May 2017 when they had the Zwack Report in hand.

[104] When Ms. Henderson was asked if it was highly unusual for her to be involved in the plaintiff's termination, she responded that everything about the termination was "highly unusual" and that the Formal Investigation and the plaintiff's role in it was a "stain on the public service".

[105] The defendant had made no proper arrangements for off-boarding the plaintiff. On the date of termination, no arrangements were made to retrieve the plaintiff's office keys, equipment, or restrict her access to confidential data. The plaintiff's direct supervisor was only notified of the termination earlier that day. No arrangements were made to assist the plaintiff with retrieving her personal items

from her office. When the plaintiff returned to Victoria from Duncan late on June 29, 2017, she arranged with a colleague to attend her office and facilitate retrieving her personal items, secure her office (box up papers and work product) and hand over her keys and other employer items.

[106] There is some correspondence from July 6, 2017, indicating that the defendant was, by then, turning their mind to retrieving government assets from the plaintiff.

Events Post-Termination

Media

[107] On July 4, 2017, the defendant received a media inquiry “confirming if Ms. Waldman, Ms. Kislock and the plaintiff are no longer with the ministry, and commenting on the reasons for their departure”. The recommended Ministry of Finance statement was:

“As this is a personnel matter, we can’t go into further details. In all personnel matters, we’re limited in what we can say due to privacy considerations. We can confirm that the individuals are not with the BC Public Service.”

[Emphasis added.]

[108] Media reported that the plaintiff was no longer working for the B.C. government.

[109] On July 5, 2017, the Times Colonist reported as follows:

Health researchers wrongly fired in 2012 have received letters of apology and cheques, ranging from \$15,000 to \$125,000, from the head of the B.C. Public Service.

The payouts, based on recommendations by the B.C. ombudsperson, were delivered in the final week of June – just in time for the ombudsperson’s recommended deadline of June 30.

.....

A spokesperson for the Ministry of Finance confirmed that Barb Walman, Lindsey Kislock and Wendy Taylor had left their positions.

“As this is a personnel matter, we can’t go into further details. In all personnel matters we’re limited in what we can say due to privacy considerations. We can confirm that the individuals are not with the B.C. Public Service.”

Taylor was one of the lead investigators in the process that led to the firings.

[110] The plaintiff testified to the reputational damage she suffered as a consequence of being tied to the Province's Misfire Report response and associated misinformation disseminated in the media. I find as a matter of fact that the plaintiff did suffer reputation risk as a consequence of the defendant's approach to tethering the plaintiff's termination to its Misfire Report response.

Severance

[111] On August 28, 2018, the plaintiff received a letter from Workforce Restructuring seeking a response concerning the plaintiff's severance. In particular, the defendant was seeking return of the executed agreement and release.

[112] The defendant proceeded to pay the severance without return of the release to discharge its severance obligations. It indicated that it would be paying a lump sum for the retroactive payments with salary and benefit continuance for the remainder of the severance period (December 31, 2018). The payment was made on or about September 16, 2018. At no time prior to this date was it communicated to the plaintiff that the agreement and release was not required for her to receive her severance payment.

[113] On August 28, 2018, the defendant wrote, *inter alia*, to the plaintiff as follows:

We were seeking a response by June 29th but to date have not received the executed agreement or any follow up from you.

The Province wishes to discharge its severance liability in this matter. In order to do so, and in the absence of any instructions from you, I have requested that your severance be activated on September 16, 2018. On that date you will be provided with a lump sum for the retroactive period to your date of termination, and then salary and benefit continuance for the remainder of your severance until the end of the 18 month period, which is December 31, 2018.

The remaining severance payments will be provided to by way of bi-weekly cheques sent to your home.

[114] As a consequence of not receiving the severance payment concurrent with her termination, the plaintiff was required to draw on her pension earlier than she would have wanted.

Awards

[115] On August 14, 2018, the plaintiff was invited to attend the Long Service Award reception to be held on September 27, 2018, in recognition of her long service with the government.

[116] On November 8, 2018, the plaintiff was nominated and selected to receive a Compliance and Enforcement Collaborative Challenge Coin for her outstanding contribution to the advancement of the compliance and enforcement sector in British Columbia. The Challenge Coin was adopted by the Ministry of Attorney General to demonstrate appreciation for the outstanding contribution of individual members in the categories of exemplary leadership, going above and beyond to support the compliance and enforcement sector, and advocating for the sector without personal or professional gain. The plaintiff was nominated for advocating for the compliance and enforcement sector without personal or professional gain.

Other Employment

[117] Following her termination, the plaintiff achieved full-time instructor status by teaching at Camosun College and Royal Roads University.

Other Relevant Facts

Plaintiff Performance Reviews

[118] The plaintiff has put into evidence several of her performance reviews prior to her termination.

[119] The plaintiff's 2014/2015 performance review included the following supervisor commentary:

Wendy has done an exceptional job in a role that requires a self-starter who has the leadership ability to inspire others to work on initiatives outside of their regular duties. Her energy and passion are rare and she has become a

personal hub – facilitating productive networking of C&E leaders throughout government.

As notes above, Wendy has been absolutely remarkable in her ability to build membership in the Committee. It is no doubt her passion that draws people in, however, they are staying – and working hard for the greater cause because she opens opportunities for individuals to contribute in ways that inspires these leaders to participate and may [sic] their own personal contribution.

Rating Wendy this year was a challenge. I have historically rated “exceeds expectations” only very rarely. However, Wendy’s performance this year has been remarkable in many respect – placing her on the edge of this top rating. If Wendy is able to land the ambitious initiatives next year – I expect this rating will be appropriate.

[120] In 2015, the plaintiff was given a performance rating of “Achieves Expectations” meaning “is meeting expectations of job performance and is demonstrating solid corporate values”.

[121] The 2015/2016 performance review included the following supervisor commentary:

My comments related to Wendy’s achievement of her work goals demonstrate an exceptional year of accomplishment. I believe that if, under Wendy’s leadership, we achieve another year similar of achievement that the compliance and enforcement committee will be secure in its future existence and support from the government’s senior executive for many years to come. This is very important to achieve the benefits of improving the efficiency and effectiveness of the entire sector, a sector that accounts for over 25% of the provincial workforce. This will be a substantial and lasting contribution to the provincial government.

It is for all these reasons that I believe Wendy has performed in the manner that exceeds reasonable expectations. It is rare that I rate employees at this level.

[122] In 2016, the plaintiff was given a performance rating of “Exceeds Expectations” meaning “is exceeding expectations of job performance and is demonstrating exceptional corporate values”.

[123] The 2016/2017 performance review included the following supervisor commentary:

For the last number of years Wendy has performed at a very high level at Executive Director of the Compliance and Enforcement Committee. Last year

she out performed expectations of the position by a wide margin. While her rating this year is meets expectations (the author has provided an Exceeds rating only 3 times in 6 years). It is important to note that Wendy's performance continued to be at a very high level with outstanding outcomes in virtually all areas of her endeavor.

Wendy is exceptionally well suited to her current roll [sic].

[124] The plaintiff received a 2017 performance rating of "Achieves Expectations".

Notice of Civil Claim

[125] The notice of civil claim was filed on June 24, 2019, and amended on February 6, 2024.

Discussion

[126] I will now consider the following claims in the context of these factual findings and the applicable legal principles:

- a) Is the plaintiff entitled to be indemnified for legal fees she incurred?
- b) Is the plaintiff entitled to general damages?
- c) Is the plaintiff entitled to aggravated damages?
- d) Are the acts of the defendant such that there should be an award for punitive damages?
- e) Should the court receive further submissions on the matter of costs following this decision?

A. Claim for Legal Fees

[127] The plaintiff seeks payment from the defendant of the following legal accounts (collectively the "Legal Expenses"):

- a) \$34,038.00 representing the amount that exceeded the \$25,000 indemnity provided for the plaintiff's mandatory participation in the Misfire Report;

- b) \$3,461.57 representing the plaintiff's legal fees in relation to the McLean and Zwack investigations; and
- c) \$14,542.26 representing the plaintiff's legal fees in relation to the Hancock investigation.

[128] Some of the accounts have been marked draft and the plaintiff testified that she has not made payment on these accounts yet as she has been unable to do so.

[129] The plaintiff received \$25,000 towards her legal accounts for the Ombudsperson inquiry.

Applicable Legal Principles

[130] Subsection 4(c) of the *Excluded Employees (Legal Proceedings) Indemnity Regulation*, B.C. Reg. 62/2012 [*Indemnity Regulation*], provides as follows:

Where coverage is not available

- 4** An employee is not eligible for coverage with respect to any of the following:
- (a) legal proceedings brought by or on behalf of the employee, other than a defamation action brought by the employee;
 - (b) legal advice or representation respecting coverage;
 - (c) a dispute between the employee and the employee's employer respecting the employee's employment;
 - (d) an appeal or judicial review of the exercise of a statutory power by the employee.

[131] Section 1 of the *Guarantees and Indemnities Regulation*, B.C. Reg. 258/87 [*Indemnities Regulation*], provides as follows:

Approval for indemnities on behalf of government

- 1** An indemnity may only be given by or on behalf of the government if
- (a) prior written approval has been given by the Minister of Finance, or
 - (b) the director of the Risk Management Branch of the Ministry of Finance, or a person specified by the director for the purpose of this section, has given prior written assurance that the proposal for the indemnity

has been reviewed and accepted by the Risk Management Branch.

[132] It is not disputed that the plaintiff is an excluded employee and subject to the *Indemnity Regulation* and the *Indemnities Regulation*.

Analysis

[133] The plaintiff testified that she met with then-Deputy Minister of Finance, Douglas Scott, regarding her concerns about her legal fees and that she was told something to the effect of “not to worry about it” and that “things would be taken care of”. Based on that advice, the plaintiff says that she formed the view that she would be indemnified for her legal expenses. The plaintiff was not sure of the timing of the meeting or when the representation was made to her.

[134] Mr. Scott testified that he did not instruct anyone to pay for the plaintiff’s legal accounts and while he would listen to the plaintiff’s concerns regarding her participation in the Ombudsperson inquiry, he did not represent that he would see that her legal accounts were paid. Mr. Scott testified that he was aware of the indemnity system set up within the government for payment of legal accounts and would not have made representations to the plaintiff that went outside the scope of that indemnity system.

[135] While I have generally found Ms. Taylor credible throughout her evidence, her testimony concerning the indemnification of her legal accounts lacks reliability.

[136] Credibility and reliability are distinct concepts relevant to the assessment of a witness’s testimony. Reliability concerns the accuracy of the witness’s testimony and involves concepts such as the ability to accurately observe, recall and recount the events at issue. Credibility concerns the honesty and sincerity of the witness. A witness who is credible may be unreliable: *Celones v. Chandra*, 2023 BCSC 38 at para. 112.

[137] The plaintiff’s memory concerning her meetings with Mr. Scott lacked important details, such as when the meetings occurred or the details concerning the

type of indemnity, and I find she has failed to establish that she was told that her legal fees would be indemnified.

[138] The plaintiff incurred legal fees related to different investigations and at different times. I find it unlikely that she would have been provided with an open-ended indemnity for the Legal Expenses from the then-Deputy Minister of Finance, who would have been familiar with the government's indemnity system.

[139] I find it just as probable that if such a statement was made that it concerned the \$25,000 indemnity related to the subpoena that was issued by the Ombudsperson.

[140] Accordingly, the plaintiff has not established, on a balance of probabilities, that Mr. Scott provided her with an indemnity for the Legal Expenses.

[141] Further, the plaintiff has not established any right to be indemnified pursuant to the *Indemnity Regulation* and the *Indemnities Regulation*.

[142] While I found that the plaintiff is not entitled to indemnification from the defendant for the Legal Expenses based on an alleged promise, my finding does not consider the matter of the plaintiff's costs with respect to this action.

B. Claim for General Damages

[143] While the plaintiff's position during the trial primarily focused on her claim for aggravated damages, the plaintiff sought damages for wrongful dismissal in her notice of civil claim, and I will consider that component of her claim next.

[144] The plaintiff focuses her claim under this heading on not receiving her severance at the time of termination and having to take out her pension.

Applicable Legal Principles

[145] As a general principle, as long as notice or payment in lieu of notice is provided, an employer is entitled to terminate an employee without cause.

[146] It is not disputed that pursuant to the *Employment Termination Standards Regulation*, B.C. Reg 379/97 [the “*Termination Regulation*”] that 18 months’ notice is the maximum amount of notice or pay in lieu of notice that is payable to a public servant plus an allowance for benefits. The benefits portion payable is equivalent to the employer’s cost of the benefits that covers extended health and dental.

[147] The defendant has directed my attention to a decision of this court that considered the loss of pension benefits arising from termination of employment. In *Tull v. Norske Skog Canada Limited*, 2004 BCSC 1098, the court held that an employee was entitled to recover as damages an amount equal to the difference between the value of his or her pension had he worked to the end of the reasonable notice period, and the value of the pension determined at the date of dismissal. In *Tull*, the court had expert evidence supporting the claim.

Analysis

[148] It is not disputed that the plaintiff received the maximum allowable severance payable to her as a public servant employee.

[149] Further, the defendant was entitled to terminate the plaintiff, provided the plaintiff was given sufficient notice or payment in lieu of notice. The defendant was not required to give the plaintiff reasons for her termination: *Beatty v. Canadian Mill Services Assn.*, 2003 BCSC 1053.

[150] With respect to general damages, the plaintiff seeks to assess the loss she submits she suffered because of an alleged contractual breach. I understand the plaintiff’s position to be that she has lost approximately \$967,897 calculated as her loss from the date of termination to the end of 2025, the date she anticipates that she would have retired. As I understand her position, she says the defendant was not entitled to terminate her without cause.

[151] With respect to the right to terminate the plaintiff, I find there was no contractual breach that would give rise to general damages, as the plaintiff was paid the maximum permissible amount pursuant to the legislation.

[152] The plaintiff also seeks damages concerning her pension. Exhibit 5 was the plaintiff's 2016-member benefit statement, which she relies on to support her claim. She says that it supports her position that she has been subjected to an annual reduction of \$13,176 because of having to take her pension early.

[153] The problem with the plaintiff's claim is the absence of expert evidence supporting the loss. It is impossible for me to determine, what amount, if any, the plaintiff has lost. For example, in *Tull*, the expert evidence established that there was a monetary advantage to taking the pension early and found no loss.

[154] Further, the *Termination Regulation* has prescribed the maximum amounts to be paid to an employee terminated without cause. Payments for pension contributions were not included in the calculation of severance, and I find the plaintiff has no entitlement to supplement the statutorily prescribed severance to account for her pension contributions.

[155] For the reasons outlined above and considering the evidence, or the lack thereof, I find that the plaintiff has failed to establish a claim for general damages.

[156] While I found that the plaintiff is not entitled to damages for taking her pension early, I do consider the circumstances concerning the delay in paying the plaintiff severance, giving rise to the plaintiff taking her pension when she did, to be a factor that can and should be considered in the plaintiff's claim for aggravated and/or punitive damages.

C. Claim for Aggravated (Bad Faith) Damages

Summary of the Plaintiff's Position

[157] The plaintiff summarizes the following acts as being acts of bad faith and breach of the obligation to adhere to the principle of good faith in the employment context:

- (a) when the erroneous description of Wendy Taylor's role in the investigation surfaced in the public arena, failing to take any steps to address her concerns raised and correct the inaccuracy, particularly with respect to the effective blaming of

- her as the Lead Investigator for the decisions to terminate employees and cancel research contracts;
- (b) when, as a result of the public identification of Wendy Taylor as the Lead Investigator, she was confronted and threatened in the Walmart incident, failing to take any steps either to counsel her or provide her with assurance or in any other way address the legitimate fear for herself and her family that it caused;
 - (c) ignoring the efforts made by her to preclude governments statement through the Minister, that there had been an RCMP investigation;
 - (d) when the inaccuracy of the RCMP investigation statement was made public, failing to take any steps to accept the error, other than to allow the blame for that inaccurate statement to be aimed at the investigators;
 - (e) maintaining the silence in the face of the erroneous publicity, a clear act of dishonesty;
 - (f) failing to provide reasonable notice and support with respect to the McNeil Report, particularly when there had not been questioning of Wendy Taylor with respect to the matters subsequently reported negatively of her;
 - (g) in the face of the careful and detailed work in support of her obligation to address the contents of the Misfire Report, and the subsequent Zwack and Hancock investigations of her, refusing to provide her with further indemnity for the legal costs she incurred – expressly to perform her duty as expected of her as a public servant;
 - (h) rejecting her claim for indemnity for the legal costs she incurred personally without any evidence that the obligation for such costs had been made clear to her and certainly no evidence that such a term formed part of the employment contract, the egregious nature of this position is made abundantly clear by the publicly notorious acknowledgment by government of its willingness to pay over \$6 million in legal fees for 2 cabinet appointees who pleaded guilty to criminal offences against the government;
 - (i) the inappropriate criticism of her when she testified truthfully with respect to the lack of an RCMP investigation during the course of examinations for discovery in the lawsuits against the defendant, in the follow-up after the arbitrary cancellation of the investigation;
 - (j) the arbitrary cancellation of the investigation, clearly incomplete, and directing that no report of the investigation should be issued, when even at that point in time government had modestly acknowledged that there was evidence

- indicating “problems” in the Ministry of Health with respect to the matters under investigation;
- (k) disregarding the clear findings of the Zwack and Hancock investigations where they failed to support the negative attack upon her integrity and trustworthiness as a public servant, not to mention disregarding the unchallenged evidence of her performance as a public servant with continued integrity and support for her employer;
 - (l) the clearly dishonest efforts to find justification for her termination so obviously actually connected to scapegoating her for the problems that had occurred for government as a result of the problems investigated in the Ministry of Health;
 - (m) the arbitrary and cruel actual termination, giving Wendy Taylor no option for salary continuance that would have provided substantial relief from the taxes actually imposed upon her, and particularly, the immediate termination of her benefits, 15 minutes after notice of her termination;
 - (n) allowing, it can fairly be said disclosing, public notice of her “departure” from government coincidentally with the public statements of the significant monetary payments made to the terminated employees and research contractors;
 - (o) failing to make payment of the severance, even in the arbitrary manner insisted upon, without obtaining from her a full and complete release of her employer, made particularly egregious by the “change of heart” such as it was 15 months after her termination;
 - (p) when the “change of heart” occurred, still imposing upon her a lump sum payment representing 15 months, only permitting 3 months of salary continuance, when, as Ms. Chu truthfully testified it was quite open to her employer to simply commence salary continuance on a monthly basis for the next ensuing 18 months; and
 - (q) attempting to hide the arbitrary, capricious and deliberately dishonest decision to terminate her as an active government’s apparent condemnation of her actions said to be the responsibility for the entire Ministry of Health scandal by calling it a “without cause” termination, which can only have been used to attempt to avoid the truth emerging.

[158] Based on the above, the plaintiff seeks aggravated and punitive damages.

[159] The plaintiff submits that the defendant has established that her 18-month combined salary and benefits as being the sum of \$207,401, which calculates to \$138,271 per year. As severance has been paid to the end of 2018, the plaintiff

seeks, what she says is a conservative value of salary and benefits to the end of 2025 of \$967,897.

[160] The plaintiff also submits that she is entitled to the annual salary uplift for her Band and that would equate to an additional \$89,330 to the end of 2025. The plaintiff says that she lost her annual health spending allowance of \$2,500 which would equate to \$22,500 to the end of 2025. In addition, the plaintiff seeks \$7,150 representing an amount the plaintiff submits she has paid for additional benefits and \$30,666 for a tax obligation the plaintiff testified she was required to pay due to the way the severance was paid to her.

[161] The plaintiff suggests that if the court is to treat additional income earned by the plaintiff post termination as a mitigating amount, that total amount is \$456,664 and the net general damages loss is submitted to be \$660,879.

[162] In addition, the plaintiff seeks damages for reputational loss, personal emotional distress and significant embarrassment resulting from the manner of her termination.

[163] In summary, the plaintiff seeks an award for her general and aggravated damages in the total amount of \$650,000, as well as \$50,000 in punitive damages.

Summary of the Defendant's Position

[164] The defendant submits that termination of an employee is the right of the employer and not a matter of discretion, as the plaintiff suggests. The defendant further submits that a contract of employment that does not contain a specific term relating to termination can be ended by the provision of reasonable notice or pay in lieu of notice.

[165] The defendant says that the plaintiff seeks to have the court extend the maximum notice period permitted by law, that being 18 months, to eight years.

[166] The defendant submits that the hallmark of a claim for aggravated damages for bad faith is where the termination is based on dishonesty. The defendant submits that there is no evidence of dishonesty or improper motive on its part.

[167] With respect to the allegations of bad faith summarized by the plaintiff above, the defendant makes the following response:

- a. Ms. Taylor was the Lead investigator;
- b. Government did not identify her as the Lead investigator to the media;
- c. Government did not blame Ms. Taylor for anything;
- d. Government had no role in the “Walmart incident” and no means of controlling that;
- e. Whether Ms. Taylor was a person who made efforts to dissuade Government about statements relating to the RCMP and an investigation is not relevant and there is no evidence that Government associated Ms. Taylor with the publication of that information;
- f. Government did not refuse to indemnify Ms. Taylor for legal fees she incurred – she was not entitled to indemnity other than the Special Indemnity she had in relation to the Ombudsperson’s process;
- g. There is no relationship between the indemnities in the Basi-Virk criminal matter and the entitlement of Ms. Taylor to an indemnity **[Plaintiff’s Closing Written Submissions at para. 162(h)]**;
- h. Putting an end to the 2012 MOH Investigations was likely made on account of significant litigation having been commenced and is irrelevant to Ms. Taylor’s termination;
- i. There was no dishonesty in relation to her without cause termination;
- j. Government, as it was entitled to do, exercised its discretion to pay Ms. Taylor a lump sum with compensation for benefits;
- k. Government did not coordinate Ms. Taylor’s termination with the steps it took to meet its obligations to make payments and apologies by June 30, 2017 as per the Ombudsperson;
- l. Government sought to discharge its severance obligations to Ms. Taylor. Ms. Taylor decided to pursue getting her job back and failed to communicate with Government whereby Government acted unilaterally to meet such obligations;
- m. Government rejected terminating Ms. Taylor for cause as it related to the findings of the Ombudsperson. However, even if Government’s decision to terminate Ms. Taylor was based on the Ombudsperson’s findings, that does not render her termination without cause to be in bad faith.

Applicable Legal Principles

Aggravated (Bad Faith) Damages

[168] In the employment law context, damages resulting from the manner of dismissal will be available if they result from the circumstances described in *Wallace v. United Grain Growers Ltd.*, [1997] 3 SCR 701, namely where the employer engages in conduct during the course of dismissal that is “unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive”: *Honda Canada Inc. v. Keays*, 2008 SCC 39.

[169] Justice Horsman (now Horsman J.A.) in *Hrynkiw v. Central City Brewers & Distillers Ltd.*, 2020 BCSC 1640 provided the following summary of the law concerning aggravated damages:

[190] The common law imposes an obligation on an employer to act in good faith in the manner of dismissal. Failure to do so can lead to foreseeable, compensable damages. If an employee can prove that the manner of dismissal caused mental distress that was in the contemplation of the parties at the time of the contract, then damages for the mental distress (often referred to in the case law as “aggravated damages”) may be recoverable: *Honda Canada Inc. v. Keays*, 2008 SCC 39 at paras. 58-59 [Honda].

[191] As set out by our Court of Appeal in *Lau v. Royal Bank of Canada*, 2017 BCCA 253 [Lau] at para. 17, an employee seeking to recover aggravated damages must establish two conditions:

- i. the employer has breached its duty of good faith and fair dealing in the manner of dismissal, and
- ii. the employee suffered compensable damages as a result of breach.

[192] Examples of conduct that may constitute a breach of the employer’s duty of good faith and fair dealing include being untruthful, misleading or unduly insensitive in the course of dismissal, or attacking the employee’s reputation by declarations made at the time of dismissal: *Wallace v. United Grain Growers Ltd.*, 1997 CanLII 332 (SCC), [1997] 3 S.C.R. 701 at para. 98; *Honda* at para. 59. The employer’s dealings with the employee after dismissal, including its conduct in litigating the employee’s claim, may be considered as an aspect of the manner of dismissal provided it is conduct that relates to the dismissal: *Acumen Law Corporation v. Ojanen*, 2019 BCSC 1352 at para. 126; *O.W.L. (Orphaned Wildlife) Rehabilitation Society v. Day*, 2018 BCSC 1724 at para. 286.

[193] To establish the second condition of the test, the plaintiff must prove something beyond the normal distress and hurt feelings that invariably

accompanies the loss of employment: *Cottrill v. Utopia Day Spas and Salons Ltd.*, 2018 BCCA 383 at paras 14-15, leave to appeal ref'd [2018] S.C.C.A. No. 533 [Cottrill]; *Quach v. Mitrix Services Ltd.*, 2020 BCCA 25 at paras. 26-27. Medical evidence is not required to establish that the employee has suffered emotional or health consequences but there must be some evidence of serious and prolonged disruption that transcends ordinary emotional upset or distress: *Cottill* at para. 18; *Lau* at para. 49; *Saadati v. Moorhead*, 2017 SCC 28 at para. 40.

[170] Following *Hrynkiw*, the Supreme Court of Canada decided *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45. In *C.M. Callow*, Kasirer J. provided further guidance on the duty to act honestly in the employment context:

[37] First, *Bhasin* is clear that even though Baycrest had what was, on its face, an unfettered right to terminate the winter maintenance agreement on 10 days' notice, the right had to be exercised in keeping with the duty to act honestly, i.e. Baycrest could not "lie or otherwise knowingly mislead" Callow "about matters directly linked to the performance of the contract". According to the Court of Appeal, any dishonesty was about a renewal, which was in turn connected to pre-contractual negotiations to which the duty as stated in *Bhasin* does not apply. I respectfully disagree. In my view, the Court of Appeal may have erroneously framed the trial judge's findings at para. 6, writing that she found that Baycrest had represented "that the winter contract was not in danger of non-renewal" (emphasis added). Referring instead to the ongoing winter services agreement, the trial judge had found Baycrest misrepresented "that the contract was not in danger despite [Baycrest's] knowledge that Callow was taking on extra tasks to bolster the chances of renewing the winter maintenance services contract" (para. 65). In determining whether dishonesty is connected to a given contract, the relevant question is generally whether a right under that contract was exercised, or an obligation under that contract was performed, dishonestly. As I understand it, the trial judge's finding was that the dishonesty in this case was related not to a future contract but to the termination of the winter maintenance agreement. If someone is led to believe that their counterparty is content with their work and their ongoing contract is likely to be renewed, it is reasonable for that person to infer that the ongoing contract is in good standing and will not be terminated early. This is what the trial judge found. Simply said, Baycrest's alleged deception was directly linked to this contract because its exercise of the termination clause in this contract was dishonest.

[38] Second, the Court of Appeal erred when it concluded that the trial judge's findings did not amount to a breach of the duty of honest performance. While the duty of honest performance is not to be equated with a positive obligation of disclosure, this too does not exhaust the question as to whether Baycrest's conduct constituted, as a breach of the duty of honesty, a wrongful exercise of the termination clause. Baycrest may not have had a free-standing obligation to disclose its intention to terminate the contract before the mandated 10 days' notice, but it nonetheless had an obligation to refrain from misleading Callow in the exercise of that clause. In

circumstances where a party lies to or knowingly misleads another, a lack of a positive obligation of disclosure does not preclude an obligation to correct the false impression created through its own actions.

[39] In light of these points, it is my view that this is not a simple contractual interpretation case bearing on the meaning to be given to clause 9. Nor is this a case involving passive failure to disclose a material fact. Instead, as recognized by the Court of Appeal, “[n]ot only did [Baycrest] fail to inform [Callow] of [its] decision to terminate, . . . [it] actively deceived Callow as to [its] intentions and accepted the ‘freebie’ work [it] performed, in the knowledge that this extra work was performed with the intention/hope of persuading [Baycrest] to award [Callow] additional contracts once the present contracts expired” (para. 15 (emphasis added)). While Baycrest was not required to subvert its legitimate contractual interests to those of Callow in respect of the existing winter services agreement, it could not, as it did, “undermine those interests in bad faith” (*Bhasin*, at para. 65).

...

[43] I begin by recognizing the debate as to the extent to which good faith, beyond the duty of honesty, should substantively constrain a right to terminate, in particular one found in a contract (see, e.g., W. Courtney, “Good Faith and Termination: The English and Australian Experience” (2019), 1 *Journal of Commonwealth Law* 185, at p. 189; M. Bridge, “The Exercise of Contractual Discretion” (2019), 135 *L.Q.R.* 227, at p. 247). For some, the right to terminate is in the nature of an “absolute right” insulated from judicial oversight, unlike the exercise of contractual discretion (see E. Peel, *The Law of Contract* (15th ed. 2020), at para. 18-088). To this end, I recall that Cromwell J. observed that “[c]lassifying the decision not to renew the contract as a contractual discretion would constitute a significant expansion of the decided cases under that type of situation” (*Bhasin*, at para. 72). I need not and do not seek to resolve this debate in this case. I emphasize that Cromwell J. himself recognized that, regardless of this debate, the non-renewal clause could not be exercised dishonestly (para. 94). Whatever the full range of circumstances to which good faith is relevant to contract law in common law Canada, it is beyond question that the duty of honesty is germane to the performance of this contract, in particular to the way in which the unilateral right to terminate for convenience set forth in clause 9 was exercised.

[44] As a further preliminary matter, I recall that the organizing principle of good faith recognized by Cromwell J. is not a free-standing rule, but instead manifests itself through existing good faith doctrines, and that this list may be incrementally expanded where appropriate. In this case, Callow invokes two existing doctrines: the duty of honest performance and the duty to exercise discretionary powers in good faith. In my view, properly understood, the duty to act honestly about matters directly linked to the performance of the contract — the exercise of the termination clause — is sufficient to dispose of this appeal. No expansion of the law set forth in *Bhasin* is necessary to find in favour of Callow. Rather, this appeal provides an opportunity to illustrate this existing doctrine that, I say respectfully, was misconstrued by the Court of Appeal.

[45] While these two existing doctrines are indeed distinct, like each of the different manifestations of the organizing principle, they should not be thought of as disconnected from one another. Cromwell J. explained that good faith contractual performance is a shared “requirement of justice” that underpins and informs the various rules recognized by the common law on obligations of good faith contractual performance (*Bhasin*, at para. 64). The organizing principle of good faith was intended to correct the “piecemeal” approach to good faith in the common law, which too often failed to take a consistent or principled approach to similar problems and, instead, develop the law in this area in a “coherent and principled way” (paras. 59 and 64).

...

[47] The specific legal doctrines derived from the organizing principle rest on a “requirement of justice” that a contracting party, like Baycrest here in respect of the contractual duty of honest performance, have appropriate regard to the legitimate contractual interests of their counterparty (*Bhasin*, at paras. 63-64). It need not, according to *Bhasin*, subvert its own interests to those of Callow by acting as a fiduciary or in a selfless manner that would confer a benefit on Callow. To be sure, this requirement of justice reflects the notion that the bargain, the rights and obligations agreed to, is the first source of fairness between parties to a contract. But by the same token, those rights and obligations must be exercised and performed, as stated by the organizing principle, honestly and reasonably and not capriciously or arbitrarily where recognized by law. This requirement of justice, rooted in a contractual ideal of corrective justice, ties the existing doctrines of good faith, including the duty to act honestly, together. The duty of honest performance is but an exemplification of this ideal. Here, based on its failure to perform clause 9 honestly, Baycrest committed a breach of contract, a civil wrong, for which it has to answer.

[48] When, in *Bhasin*, Cromwell J. recognized a duty to act honestly in the performance of contracts, he explained that this duty “should not be thought of as an implied term, but a general doctrine of contract law that imposes as a contractual duty a minimum standard of honest contractual performance” (para. 74). Characterizing this new duty as a matter of contractual doctrine was appropriate, Cromwell J. wrote, “since parties will rarely expect that their contracts permit dishonest performance of their obligations” (para. 76). The duty therefore applies even where — as in our case — the parties have expressly provided for the modalities of termination given that the duty of good faith “operates irrespective of the intentions of the parties” (para. 74). No contractual right, including a termination right, can be exercised dishonestly and, as such, contrary to the requirements of good faith.

...

[54] The issue, then, is not whether the clause was properly interpreted, or whether the bargain itself is inadequate. Moreover, what is important is not the failure to act honestly in the abstract but whether Baycrest failed to act honestly in exercising clause 9. Stated simply, no contractual right can be exercised in a dishonest manner because, pursuant to *Bhasin*, that would be contrary to an imperative requirement of good faith, i.e. not to lie or knowingly

deceive one's counterparty in a matter directly linked to the performance of the contract.

...

[84] That said, I emphasize once again that it is unquestionable that the duty is imposed as a matter of contractual doctrine rather than by implication or interpretation, and, by virtue of its status as contractual doctrine, parties are “not free to exclude” the duty altogether (*Bhasin*, at para. 75). Even if the parties, as here, have agreed to a term that provides for an apparently unfettered right to terminate the contract for convenience, that right cannot be exercised in a manner that transgresses the core expectations of honesty required by good faith in the performance of contracts.

...

[91] At the end of the day, whether or not a party has “knowingly misled” its counterparty is a highly fact-specific determination, and can include lies, half-truths, omissions, and even silence, depending on the circumstances. I stress that this list is not closed; it merely exemplifies that dishonesty or misleading conduct is not confined to direct lies. No reviewable error has been shown in the finding of dishonesty that took place in anticipation of the exercise of clause 9 here. I would not interfere with the trial judge's view here on a matter that is owed deference. Deference should be shown to the trial judge in reviewing her discretionary exercise of weighing the evidence, especially given credibility played a part in her analysis, as she explained.

[171] Pre (and post) dismissal conduct may be considered in assessing bad faith at termination if it is a component of the manner of dismissal: *Matthews v Ocean Nutrition Canada Ltd.*, 2020 SCC 26 at paras 40, 81; *Doyle v Zochem Inc.*, 2017 ONCA 130 at para 13; *Lalonde v Sena Solid Waste Holdings Inc.*, 2017 ABQB 374 at para 80; *Deol v Dreyer Davison LLP*, 2020 BCSC 771 at paras 130–137.

[172] The “manner of dismissal” is an issue of fact, and in some cases may span a period of years before, or years after, the moment of dismissal. The rationale for this is aptly stated in *Doyle* at para. 39:

[39] ... [W]hile some conduct during a dismissal meeting viewed in isolation would not constitute bad faith, the same conduct when part of a course of conduct on the part of an employer that inflicts mental distress on an employee may legitimately inform the result...

Analysis

Grounds Not Established

[173] In the context of determining whether the plaintiff has made out a claim for bad faith, a piecemeal approach should be avoided. However, there are certain allegations that I find either fall short of establishing bad faith on the part of the defendant or are not sufficiently connected to the plaintiff's without cause termination and should not be considered in my analysis of bad faith. I detail these below.

i. The Walmart Incident

[174] The plaintiff claims that she was confronted and threatened in Walmart because of being identified as the lead investigator in the media. The plaintiff says that the defendant failed to take any steps to counsel her or provide her with assistance to address the threat she felt she was under. While I have no difficulty accepting the incident occurred, and that the employer's response may have exhibited some insensitivity, I do not find that the employer's response to it to be inadequate. If the plaintiff felt her safety was threatened, it was a matter that she ought to have reported to the appropriate policing authorities, as this was a matter outside of the defendant's control.

[175] Although this may have been an unpleasant event for the plaintiff, the plaintiff has failed to establish that this event was sufficiently connected to the plaintiff's termination.

ii. Cancelling the Formal Investigation

[176] The plaintiff claims that it was an act of bad faith towards her when there was an arbitrary cancellation of the Formal Investigation, which was incomplete. This was a decision that was entirely within the defendant's discretion and not one that would have any independent impact on the plaintiff. While I appreciate that there was criticism arising from the lack of a final report which impacted the plaintiff, the discrete cancellation of the Formal Investigation is not connected to the plaintiff's termination and was a decision that was available to the defendant to make.

iii. Failing to pay legal fees

[177] For the reasons I have provided, the plaintiff has failed to establish that the defendant was required to indemnify her for the Legal Expenses. As such, the defendant's refusal to pay cannot form the basis of a bad faith claim against it.

Lump Sum Payment of Severance

[178] The plaintiff argues that the payment of her severance in a lump sum resulted in higher tax consequences to her than she would have been subjected to if she was paid in monthly instalments. I do not find that the defendant's exercise of statutory discretion in making a lump sum payment entitles the plaintiff to compensation. The plaintiff should have been aware of the statutory severance provisions as a component of her contract of employment with the defendant, as they are statutorily prescribed. As such, a breach of the contract cannot be made out where a party is exercising its rights pursuant to the express terms of the employment contract.

Consideration of the Remaining Allegations

[179] The onus is on the plaintiff to establish that the defendant breached its duty of good faith and fair dealing "in the manner of the plaintiff's dismissal", and that she suffered compensable damages because of the breach.

[180] While the plaintiff has brought forward a broad and sweeping range of complaints, I find there are two main elements of the defendant's conduct that require consideration:

- a) delaying the plaintiff's severance payment; and
- b) circumstances of the plaintiff's termination as it relates to the Misfire Report.

[181] While not considering the other elements raised by the plaintiff as standalone breaches, I will address them in my analysis as they provide context to the two elements I have identified above.

Delaying the plaintiff's severance payment

[182] It is not disputed that that defendant withheld the plaintiff's severance payment for 15 months.

[183] Paragraph 4 of *Employment Termination Standards*, B.C. Reg 379/97 [*Termination Regulation*] provides that if an employer terminates employment without cause and excuses the employee from performing the employee's duties under s. 3(1)(d), the employer, in its sole discretion, may provide the employee with severance. The severance must be in the form of periodic payments unless the employer, in its sole discretion, considers a lump payment to be more appropriate.

[184] In this case, the defendant exercised its discretion to make a lump sum payment. The amount of severance is established pursuant the *Regulation* and that amount is not in dispute.

[185] The defendant presented the plaintiff with release paperwork (the "Severance Release") that it stated had to be signed and returned to receive the severance payment. In the ensuing months, the plaintiff sought to regain her employment which the defendant communicated was not available. The plaintiff in turn communicated that she would not sign the Severance Release. Notwithstanding these positions, it was not available to the defendant to withhold the plaintiff's severance once it had exercised its absolute discretion to make a lump sum payment.

[186] Once the employer has exercised its discretion to pay severance, the *Regulation* does not prescribe terms that can attach to the payment of severance, other than the amount of the payment.

[187] Accordingly, I find the defendant breached the terms of the *Termination Regulation* when it asked the plaintiff to release the defendant from liability in exchange for payment of severance. This was a breach of the contractual duty owed to the plaintiff.

[188] Due to this contractual breach, the plaintiff's source of income was abruptly stopped, and the plaintiff was forced to look for alternative income sources. The plaintiff exercised her pension early, which she testified had a negative impact on its value. While the plaintiff has not quantified the negative impact, I do accept the plaintiff's evidence that she would not have relied on her pension at that time had she received the severance payment when she was terminated.

Termination of the plaintiff in relation to Misfire Report

[189] For the reasons that follow, I find that the defendant breached its duty of good faith contractual dealing with the plaintiff in the manner of her termination.

[190] The defendant submits that the plaintiff's termination was unconnected to the making of the *ex gratia* payments to the terminated MOH employees. I disagree. The plaintiff has put forward direct and circumstantial evidence supporting her claim that she was made a "scapegoat" of the government as it concerned the Formal Investigation and the resulting Misfire Report. Based on that evidence, as summarized below, I find that the defendant unfairly made the plaintiff its scapegoat.

[191] The plaintiff was investigated by Mr. Hancock and Ms. Zwack. The purpose of these investigations was to determine if there were grounds to discipline or terminate the plaintiff. The reports were available to the government by the end of May 2017, and no immediate action was taken. The plaintiff was not terminated until the end of June 2017. In any event, it was available to the defendant to ensure that the termination of the plaintiff did not align with its political objectives regarding its response to the Misfire Report.

[192] Leading up to the plaintiff's termination, the Premier and Ms. Henderson were facing increased media attention concerning the Misfire Report and the government's response to it. Ms. Henderson was interviewed and questioned as to why the plaintiff was still employed by the province. Her response to this was to the effect of "I'm giving it consideration", implying that she would consider the plaintiff's blameworthiness.

[193] For an extended period, the plaintiff's employment was uncertain, which had negative impacts on the plaintiff's well-being. The plaintiff was required to participate in the Hancock and Zwack investigations and hear from the press that the Deputy Minister to the Premier was considering firing her.

[194] The plaintiff was terminated 15 minutes before the *ex gratia* payments were made and shortly before the non-confidence vote was taken leading to a change in government.

[195] Ms. Henderson explained that she wanted to ensure the plaintiff's termination was handled by her as she had taken responsibility for responding to the Misfire Report and that she was concerned that she would not have a job if there was a change of government following the non-confidence vote. As such, it had to be done on the day of the non-confidence vote.

[196] I do not accept Ms. Henderson's explanation. First, termination of the plaintiff was not a recommendation in the Misfire Report, and in fact it commented that no further firings should occur. Second, based on the evidence, I find the more plausible explanation to be that the government was facing increased political pressure and wanted to be able to report that it had made the *ex gratia* payments while responding to media inquiries that the plaintiff had been terminated. Effectively, the government wanted to communicate to the public that the persons responsible were no longer employed by the province, because it suited them politically.

[197] What made the defendant's conduct even more egregious is that the public, based on media reports, had likely formed the view that the plaintiff was responsible for key decisions that formed the basis for the Ombudsperson's findings.

[198] First, the media reported that the plaintiff was involved in the termination of the MOH employees. However, the evidence before me establishes that the plaintiff was not involved in those decisions; they were being made at the deputy minister level. Second, the plaintiff was connected by the media to the decision to publicly

state there was an active RCMP investigation. The evidence before me establishes that the plaintiff actively attempted to stop that statement from being made. The plaintiff, as a public servant, was not given an opportunity to address the media's misreporting. However unfair this might have been, the defendant's failure to correct the media reports does not give rise to aggravated damages on its own as it is not sufficiently connected to the manner of the plaintiff's termination. However, what is relevant to the manner of the plaintiff's termination is that the defendant capitalized on the public's misperception, that it had failed to correct, when terminating the plaintiff by deliberately coupling the defendant's response to the Misfire Report to the plaintiff's without cause termination. To put it succinctly, the government made the plaintiff its "scapegoat".

[199] Further supporting my conclusion is Ms. Henderson's own evidence that nothing about the plaintiff's termination was usual. The plaintiff's termination was important to Ms. Henderson because she tied the plaintiff's termination to her work responding to the Misfire Report. She testified that she terminated the plaintiff based on her involvement with the Formal Investigation. I find that she terminated the plaintiff when she did because it completed her "consideration of the matter". The defendant was able to rest the blameworthy conduct on the plaintiff by communicating to the public that the plaintiff was no longer employed with the government.

[200] The defendant submits that no correlation between the timing of the plaintiff's termination and the *ex gratia* payments can be made as it is not the defendant's policy to discuss HR matters publicly and they did not include the plaintiff's termination in the press release.

[201] On review of the evidence before me, it was apparent that the matter of the plaintiff's employment remained of interest to the media. Ms. Henderson left the question of the plaintiff's ongoing employment open during her last interview. I find that the defendant should have anticipated a media request on the plaintiff's employment once the *ex gratia* payments were made.

[202] I find that it was not contemplated within the plaintiff's employment contract that she would publicly stand as the person responsible for the governments failings as outlined in the Misfire Report. The manner in which the plaintiff was terminated constitutes bad faith given the defendant's knowledge of the plaintiff's true role, and its conduct in turning the plaintiff into a public scapegoat despite this knowledge. Such conduct is worthy of an award of aggravated damages.

Has the plaintiff established compensatory damages?

[203] The plaintiff submits that her compensatory damages are the amount she would have been paid by the defendant had she not been terminated. However, this position fails to recognize that the defendant was entitled to terminate her employment. The entitlement to aggravated damages arises due to the manner of her termination, not the fact of it.

[204] What then has the plaintiff established as damages arising from the bad faith manner of her termination?

[205] As found above, the plaintiff has failed to establish what, if any, losses she suffered as a consequence of taking her pension early. Consequently, I intend to address the manner in which the defendant withheld the plaintiff's severance when considering the plaintiff's entitlement to punitive damages.

[206] Having found the defendant engaged in conduct during the course of the plaintiff's termination that was unfair and in bad faith, the plaintiff must now establish that the manner of dismissal caused her mental distress or other intangible effects: *Honda* at para. 59.

[207] Damages for mental distress beyond the ordinary upset that accompanied termination of employment cannot be evidenced simply from the plaintiff's demeanour in the witness stand: *Lau v. Royal Bank of Canada*, 2017 BCCA 253 at para. 49. There must be an evidentiary foundation for such an award which may be testimony demonstrating a "serious and prolonged disruption that transcended ordinary emotional upset or distress": *Lau* at para. 49.

[208] I accept the plaintiff's testimony that the defendant's conduct caused her significant stress and mental strain that has endured over the years. The plaintiff's account of the effects upon her were confirmed by the evidence of her friend and work colleague, Ms. Freeman.

[209] The plaintiff testified to becoming depressed. She took steps to shelter herself from the public. Some of the plaintiff's friends were critical of her and she stopped socializing with them.

[210] The public attention the plaintiff was required to endure was of significant duration and of a highly public nature, being reported widely throughout the province.

[211] To support an award for 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: *Honda* at para 59.

[212] 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 the ability to find new employment": *Tipple v. Canada (Attorney General)*, 2012 FCA 158 CanLII at para. 16.

[213] The plaintiff has made out the first two elements. As found below, the defendant connected the plaintiff's termination to the findings in the Misfire Report and did not correct specific acts that were wrongly being attributed to the plaintiff in the media. The plaintiff suffered significant reputational damage as a consequence.

[214] With respect to the third factor, the plaintiff testified the manner in which she was terminated closed many doors available to her in the justice field, which was her passion. The plaintiff had been teaching when she was terminated, and she was able to expand on her teaching opportunities in the years following her termination. I

accept the plaintiff's evidence that the manner in which she was terminated closed many doors that would have otherwise been available to her in her chosen field.

[215] In summary, I find that the plaintiff has demonstrated mental stress, beyond the mental distress that arises from dismissal generally, arising from the manner of termination. I also find that the plaintiff has demonstrated intangible losses arising from the damage to her reputation.

[216] In considering the appropriate award for aggravated damages, I find the recent summary of the authorities by Justice Branch in *Silva v. Kensington Community Centre Association*, 2025 BCSC 1563, to be helpful:

[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 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.

[217] With consideration to the highly public nature of the plaintiff’s termination, the plaintiff was subjected to widespread stigma of blameworthy conduct. The plaintiff suffered profound consequences including depression, humiliation, loss of community and loss of reputation.

[218] In my view, and considering the award granted in *Silva*, and the cases referred to therein, an award of \$50,000 for aggravated damages is appropriate.

D. Claim for Punitive Damages

Applicable Legal Principles

[219] Punitive damages are awarded to punish conduct, which is harsh, vindictive, reprehensible or malicious in nature.

[220] Aggravated and punitive damages are independently available; however, the same underlying conduct can ground both aggravated and punitive damages: *Ojanen v. Acumen Law Corporation*, 2021 BCCA 189 at para. 73. 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* at paras. 73–75.

[221] 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.

[222] A breach of the contractual duty of good faith can qualify as an independent wrong: *Honda* at para. 62.

[223] 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.

Analysis

[224] In my view, the conduct of the defendant is worthy of rebuke and requires consideration separate from the aggravated damages award.

[225] The manner in which the defendant sought to politically benefit from the plaintiff's termination is highly reprehensible. I find it is worthy of denunciation and punishment separate and apart from the aggravated damages award.

[226] I also find the defendant's withholding of severance payments, without legal explanation, to be worthy of punishment that has not been compensated for in the aggravated damages award I have made. The defendant acted in a high-handed and arbitrary way.

[227] A clear message must be sent to the defendant that public servants are not to be used as pawns for political purpose. There was a significant power imbalance between the plaintiff and the defendant. The plaintiff, as a public servant, was limited, even restricted, in responding to the media reports about her. The defendant took advantage of this imbalance by making the plaintiff into its political "scapegoat".

[228] Further, while the defendant exercised its discretion to pay the plaintiff a lump sum, it was not then open to withhold the payment in exchange for the plaintiff agreeing not to commence legal action against it. Abruptly terminating the plaintiff and holding her severance payment ransom for a release of liability was high-handed, malicious, and arbitrary. It was also contrary to the statutory provisions on which the defendant sought to rely to limit the amount of severance payable.

[229] A substantial punitive damages award is this court's primary tool for denouncing and punishing this behaviour and ensuring that it is deterred going forward.

[230] In the rare circumstances of this case, I find that an award on the higher range is necessary. While I was not referred to any like case authorities, I have sought to set an award that appropriately satisfies the purpose of punitive damages

in denunciation. In my view, \$200,000 is necessary to send the appropriate message and ensure denunciation of this type of behavior. In awarding \$200,000, I have endeavoured to take into account factors set out in *Whiten*, as quoted earlier, including proportionality to the harm caused, the degree of misconduct, the vulnerability of the plaintiff, the power imbalance between the plaintiff and the defendant, the sustained length of events giving rise to the termination, and the potential political gain for the defendant. I have also considered the amount awarded as aggravated damages and consider the additional punitive damages award as being necessary to punish the egregious behaviour.

E. Costs

[231] The plaintiff has asked to speak to costs following release of these reasons. The parties remain free to reach their own agreement resolving costs. If either party wishes to make further submissions regarding costs, they may request to make additional written submissions by contacting Supreme Court Scheduling in Victoria no later than July 15, 2026. The request should include a proposal for the exchange of written submissions.

Conclusion

[232] The plaintiff has made out her claim for aggravated and punitive damages. Accordingly, the plaintiff is awarded \$50,000 in aggravated damages and \$200,000 in punitive damages.

“LeBlanc, J.”