

CANADA / JUDGMENT

## Adriano v. 0886899 B.C. Ltd. (Kartners Bathroom Accessories)

2021 BCSC 166

COURT

Supreme Court of British Columbia

DECIDED

3 February 2021

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2021 BCSC 166 Adriano v. 0886899 B.C. Ltd. (Kartners Bathroom Accessories)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Adriano v. 0886899 B.C. Ltd. (Kartners Bathroom Accessories),

2021 BCSC 166

Date: 20210203

Docket: S1813528

Registry: Vancouver

Between:

Jose Renato Almario Adriano

Plaintiff

And

0886899 B.C. Ltd. dba Kartners Bathroom Accessories

Defendant

Before: The Honourable Madam Justice Fleming

Reasons for Judgment

The Plaintiff appearing on his own behalf:

J.R.A. Adriano

Counsel for the Defendant:

R. Keith, Q.C.

D.C. Froese

Place and Date of Trial/Hearing:

Vancouver, B.C.

February 25 and 26, 2020;

August 19, 2020

Written Submissions Received:

January 22, 2021; and

January 25, 2021

Place and Date of Judgment:

Vancouver, B.C.

February 3, 2021

Table of Contents

Introduction. 3

Preliminary Issue. 4

Overview.. 4

The Parties. 4

Mr. Adriano is Hired by Kartners. 4

Mr. Adriano's Compensation. 6

Mr. Adriano's Roles and Responsibilities. 7

The Dismissal 14

Mr. Adriano's Job Search and Subsequent Employment 14

Reasonable Notice Period. 17

Assessing Credibility. 18

Nature of Employment 21

Length of Service. 22

Age. 22

Availability of Comparable Employment 22

Other Considerations. 23

Damages in Lieu of Reasonable Notice. 25

Bonus. 26

Failure to Mitigate. 28

Aggravated Damages. 29

Receipt of Employment Insurance Benefits. 31

Costs. 32

## Introduction

- [1] By way of a summary trial application in this fast track action, the plaintiff Jose Adriano seeks damages arising from his wrongful dismissal. The defendant, who operates under the business name Kartners Bathroom Accessories ("Kartners"), admits to dismissing him without notice on October 30, 2018. In addition to damages for reasonable notice, Mr. Adriano seeks aggravated damages based on how he was dismissed and Kartners' alleged failure to provide him with a reference letter. The parties dispute the length of the reasonable notice period, if the damages payable should include an amount for bonus pay and whether particular post-dismissal earnings should be deducted. Kartners also asserts that Mr. Adriano failed to mitigate by delaying his search for comparable employment and opposes his claim for aggravated damages.
- [2] Mr. Adriano relies on his third, fourth and fifth affidavits and some admissions in support of his application. Kartners evidence includes affidavits from Darren Cooper, its president and sole director, Gordon Suggitt, its controller and Tina Burke, a recruitment consultant. There are a multitude of documents exhibited to the affidavit evidence. Mr. Cooper's first affidavit also attaches portions of a transcript of Mr. Adriano's testimony at an examination for discovery.
- [3] Both parties expressed the view that this case is well suited for resolution by way of summary trial, although they acknowledged there are direct conflicts in the evidence regarding the nature of Mr. Adriano's employment with Kartners, a factor in assessing the reasonable notice period and bonus pay.
- [4] In order to be in a position to decide the necessary facts, I permitted cross-examination of Mr. Adriano and Mr. Cooper on their affidavit evidence. All of the other considerations, and in particular the amount involved, the complexity of the case and the cost of taking the case to a convention trial in relation the amount involved, satisfy me that it is entirely appropriate to proceeding summarily.

## Preliminary Issue

- [5] Kartners objected to the admission of Mr. Adriano's fifth affidavit as inadmissible reply evidence. In the alternative, Kartners took the position that second affidavits from Mr. Cooper and Mr. Suggitt should be admitted.
- [6] I have admitted Mr. Adriano's fifth affidavit along with Mr. Cooper and Mr. Suggitt's second affidavits. While I certainly agree that at least some of Mr. Adriano's so-called response evidence ought to have been included in his third or fourth affidavit, in anticipation of Kartners' evidence, I have determined that admitting all three affidavits is the better course. In my view allowing for cross-examination of Mr. Adriano and Mr. Cooper ensures neither party is prejudiced.

## Overview

### The Parties

- [7] Mr. Adriano is 54 years old. He immigrated to Canada from the Philippines in 2010. He has a commerce degree from the Philippines.
- [8] Kartners is a bathroom accessories supply business located in North Vancouver that sells its products to individual purchasers, builders, and larger "consumers" such as hotels. Mr. Cooper started Kartners in 2010. Initially, he operated the business out of his home with limited inventory. Since then, it has grown significantly. Currently, Kartners has 14 full-time and three part-time employees. In addition to a warehouse, Kartners has a small office.

## Mr. Adriano is Hired by Kartners

- [9] In October 2013, Mr. Cooper contacted an agency to help him find an appropriate candidate to fill a part-time bookkeeping position. The job duties included inputting data using QuickBooks, managing receivables, inputting data into Excel spreadsheets, liaising with the factories to facilitate product receipt, liaising with customers to facilitate product delivery and account payment, and assisting with trade shows. Mr. Cooper anticipated, however, that the role could evolve over time to include expanded duties as Kartners grew.
- [10] Mr. Adriano applied for the position. The resume he provided (his "Initial Resume") identified his occupation as: "Bookkeeper and Office Administrator with Accounting Knowledge and QuickBooks Proficiency". According to the Initial Resume, his "professional experience" included working as a finance and administration officer for OIA Global Logistics in the Philippines where he:
- Analyzed and evaluated financial reports to spot and correct inefficiencies in the administration and management of finances.
  - Reviewed accounts payable and accounts receivable data for accuracy and conformity to agreed standards.

- Supervised and coordinated collection of payment from customers.
- Reconciled accounts with local and international offices and agents, third party service providers, and [arranged] settlement in a timely manner.
- Formulated payment plans for clients with delinquent accounts, and negotiated mutually acceptable terms.

[11] Mr. Adriano's Canadian experience as including an accounting and dispatch assistant position for a very small company called Vital Logistics Ltd. from April to May 2011, and working on contract as a bookkeeper/office administrator for a number of small businesses in North Vancouver from February 2012 onward.

[12] Mr. Cooper deposes to viewing Mr. Adriano as an ideal fit for Kartners based on his experience doing bookkeeping/administrative work with several different businesses.

[13] Mr. Adriano asserts that he accepted an employment offer from Kartners on October 23, 2019. Mr. Cooper states he initially hired Mr. Adriano as an independent contractor. I am satisfied the distinction is not significant here because, at the hearing, Kartners represented it was not asserting the reasonable notice period should be impacted by Mr. Adriano's initial status.

[14] Mr. Adriano began providing services to Kartners on or about October 29, 2019, working part-time at first.

### **Mr. Adriano's Compensation**

[15] Until August 2016, when he began to receive an annual salary, Mr. Adriano was paid an hourly rate that started at \$20. The rate increased to \$22, \$23, and then \$25 on or about October 15, 2015. By either mid-October 2017 or 2018, and at the time of his dismissal, his annual salary was \$65,000. Kartners also paid Mr. Adriano a bonus each year. He received either \$1,000 or \$1,800 in 2014; \$3,000 in 2015, \$7,000 in 2016 and \$12,000 in 2017.

[16] Mr. Adriano deposes that, towards the end of August 2016, Mr. Cooper gave him two options for his compensation package:

- a) a substantial raise in salary and a fair bonus at the end of the year; or
- b) a modest increase in salary with a generous bonus at the end of the year.

[17] Mr. Adriano said he chose the second option and, effective August 2016, he and Mr. Cooper agreed on an annual salary of \$52,000, excluding his bonus. In March 2017, Mr. Cooper raised Mr. Adriano's salary to \$56,000 and again, in late 2017, to \$65,000.

[18] Mr. Adriano asserts that after Kartners' fiscal year end in November each year, he and Mr. Cooper would discuss bonuses for all of the employees. Stating that no criteria existed, Mr. Adriano also asserts he would help determine the amounts, which, without exception, increased each year for everyone, before preparing the cheques himself.

[19] Mr. Cooper specifies that, effective August 16, 2016, Mr. Adriano was paid an annual salary of \$55,000, not \$52,000. Mr. Cooper denies any discussion of a bonus as part of Mr. Adriano's compensation, also deposing:

There were no promises made with respect to bonus and I did not indicate there should be an expectation of a bonus being paid. There specifically were no discussions with the plaintiff about weighting between salary and bonus. The \$55,000 annual salary represented an increase in the hourly rate that I was paying the plaintiff to \$26.

[20] Mr. Cooper also denies that a bonus was part of any employee's compensation. He deposes that, starting in 2014, instead of receiving a gift, active or current employees were paid a Christmas bonus typically on the last business day prior to Christmas, to thank them for their hard work over the preceding year and to recognize their contribution to the success of the business. Before determining how much to pay any particular employee, he would assess generally how well the business had done that year and whether he could afford bonuses for employees. He does not indicate, however, that there was ever a time after 2014 when active employees were not paid a Christmas bonus of some kind.

[21] Mr. Coopers states that Mr. Adriano's significant bonuses in 2016 and 2017 reflected Kartners' significant growth in operations during those years. He gave uncontradicted evidence that, in 2018, Mr. Cooper paid Christmas bonuses of \$3,000 and \$6,000 to employees earning similar salaries and with similar levels of responsibility to Mr. Adriano. Mr. Cooper explains the amounts reflected the difference in their contributions to the success of Kartners that year.

[22] In cross-examination, Mr. Adriano reluctantly agreed that only active employees, that is, only those individuals who were employed at the time the bonuses were paid, received them.

### **Mr. Adriano's Roles and Responsibilities**

[23] In addition to disputing whether a bonus formed part of Mr. Adriano's compensation, the parties dispute his roles and responsibilities with Kartners. While Mr. Adriano describes himself as having multiple roles that included several management roles and a high degree of responsibility, Mr. Cooper describes Mr. Adriano's job duties as much more circumscribed. Readily acknowledging that Mr. Adriano was a "valued employee", an "integral part of the team" and a valuable contributor while Kartners was small, Mr. Cooper also deposes that Mr. Adriano did not have the skillset or the formal CPA or CGA designation required in a larger operation. In or about late May 2018, Kartners hired Gordon Suggitt to work as the controller. Unlike Mr. Adriano, Mr. Suggitt holds a CPA designation and has

operational training in accounting.

- [24] Mr. Cooper adds that he attempted to manage Mr. Adriano's limitations, by moving him to an inside sales support role in the spring of 2018, but "it became quickly evident that he was not able to work with the newer members of our team that had a strong skill set, and quite simply Kartners had outgrown him." This, says Mr. Cooper, led to the decision to terminate Mr. Adriano's employment.
- [25] Mr. Suggitt confirms that when he started Mr. Adriano was filling an inside support role and continued to do so until he was dismissed. Both Mr. Cooper and Mr. Suggitt rely on a job description for the position of "Senior Customers Relations Associate" as accurately setting out Mr. Adriano's responsibilities in his inside sales support role.
- [26] Mr. Adriano denies being designated as inside sales support although he acknowledges that, in May 2018, the day before Mr. Suggitt started, Mr. Cooper told him his job needed to change to more actively assist the sales team with project quotes, orders and project management, and to contribute to a particular target for Kartners. According to Mr. Adriano, Mr. Cooper emphasized the importance of the new role and how perfect he was for it.
- [27] In his third affidavit, Mr. Adriano identifies his roles and responsibilities with Kartners as follows:
- a. Controller. I managed the over-all financial activities of the company, including collecting payments from customers and paying vendors and supplier bills, preparing payroll and tax remittances, computing the employee's annual bonuses, among others.
  - b. Logistics Manager. I personally dealt and negotiated with different logistics providers to get the best rates and service levels, and provided the correct tariff codes to custom brokers which resulted in savings for the business.
  - c. Purchasing and Inventory Manager. I managed over \$3,000 items with 11,000 variances to make sure that we always had timely delivery and proper stock levels.
  - d. Operations Manager. I supervised 4 order desk & customer service representatives and 3 warehouse workers.
  - e. Project management. I coordinated with customers to deliver their project orders on time, at the right venue and correct quantities and quality.
  - f. Sales support. I helped the respondent, the sales manager, sales agents and representatives with their request for quotes, pricing strategies and technical information.
  - g. Admin & IT. I take care of ordering office and warehouse supplies and occasionally troubleshoot our computer system and network.

h. Occasionally, I would also drive a truck and set-up and tear down display booths for the various trade and exhibit shows that we participate in.

[28] A resume prepared after his dismissal (the "Post-Dismissal Resume") describes his position at Kartners as follows:

### **Controller, Logistics & Inventory Manager, October 2013 to October 2018**

Managed the over-all financial operations of the company, including Accounts Receivables and payable for over 300 dealers and vendors in Canada and US; Payroll, source deductions and WCB remittances. Liaise and generate financial reports for external auditors. Managed cash flow and administers the group benefits and RRSP plan. Supervised accounting assistant for bank and credit card reconciliations, chart of accounts, item and product list maintenance. Managed all import and export operation and coordinated with customs brokers and forwarders. Directly managed over 3,400 SKU's and conducted factory visit to overseas suppliers, coordinated ordering cycles and manufacturing activities, and reviewed process improvements for quality and timeliness.

#### **Delivered Results:**

- Provided financial management and logistical support to the business owner and sales team to achieve an average of 35% annual growth rate for the past 5 years.
- Efficiently managed and consistently kept past due accounts to less than 6% of total Accounts Receivables, ensuring healthy cash flow and balances in the USD and CAD accounts with zero debt.
- Directly liaised and negotiated with shipping lines and freight companies to achieve a savings of \$600 per ocean container
- Improved order fill rates and increased inventory turns for top selling items.
- Team lead for integration of the current accounting system

[29] Mr. Cooper agrees that he encouraged Mr. Adriano to use the title "controller" to add an air of legitimacy to his role before hiring Mr. Surgitt as Kartners' first "real" controller.

[30] Mr. Cooper deposes, however, that Mr. Adriano's Post-Dismissal Resume significantly overstates his responsibilities and duties at Kartners. I summarize his evidence on this point as follows:

- It was Mr. Cooper's role as owner, and never Mr. Adriano's role, to manage the overall financial operations of the company.
- Mr. Adriano prepared paycheques but the accountant was responsible for source deductions and WCB remittances.

- Mr. Adriano was never responsible for liaising with, and preparing financial reports for, external auditors - all financial reporting and communication with external auditors was done by the accountant.
  - Mr. Adriano was never responsible for managing cash flow or administering group benefits or an RRSP plan, which did not exist until after he was dismissed. Although Mr. Adriano could view the accounts, no payments were released without Mr. Cooper's approval and only Mr. Cooper could move funds between accounts.
  - The accountant, not Mr. Adriano, was responsible for supervising accounting assistants in relation to bank and credit card reconciliations, charter of accounts, item and product list maintenance.
  - Mr. Adriano assisted with import/export operations and coordination with customer brokers and forwarders, but he was not the manager of those functions.
  - Mr. Adriano's responsibilities never included "managing" SKU's, conducting factory visits (apart from one visit with Mr. Cooper), coordinating ordering cycles and manufacturing activities, or reviewing process improvements.
- [31] Mr. Adriano's fifth affidavit also asserts that he managed, or was the sole administrator of, the RRSP Program and benefits. Similar to in his Post-Dismissal Resume, in that affidavit, he describes himself as largely responsible for the business' day-to-day operations from late 2017 onward, because Mr. Cooper was spending less time in the office, and in addition to supervising warehouse staff, Mr. Adriano conducted weekly meeting to discuss a range of issues. Further, he describes having cash flow "management functions, supervising a temporary accounting assistant and negotiating rates and service levels with freight forwarders". On this last point, Mr. Adriano deposes that, "given my experience with logistics and freight forwarding, I negotiated rates and service levels with FedEx Freight, FedEx Trade Networks, DHL Express and expanded UPS' role in [the] business".
- [32] In addition to reiterating some of his previous evidence about Mr. Adriano's roles and responsibilities, Mr. Cooper's second affidavit emphasizes that Kartners hired both Mr. Suggitt and a purchasing manager because Mr. Adriano's job had expanded beyond his capabilities. While Mr. Adriano complains that before being dismissed he continued to perform many of the accounting functions that ought to have been taken over by Mr. Suggitt, Mr. Cooper states there was a recurring problem with Mr. Adriano performing tasks that were not his responsibility despite being told a number of times not to do so. This problem included performing tasks that were the responsibility of the controller and the purchasing manager. Mr. Cooper also states that at almost all times Kartners had a designated warehouse manager and a brief attempt to shift some of those responsibilities to Mr. Adriano was unsuccessful.

- [33] In cross-examination, Mr. Adriano gave confusing evidence about supervising not only warehouse staff, but the warehouse manager because he was the de facto operations manager and Mr. Cooper had told him that the warehouse and logistics fall under operations. Although Mr. Adriano acknowledged Kartners had a purchasing and inventory manager, he testified that he also supervised that person because Mr. Cooper had told him to double check everything she did.
- [34] Consistent with Mr. Cooper's evidence, Mr. Suggitt deposes that Mr. Adriano was not responsible for the following functions:
- a) logistics and project order management;
  - b) supervising warehouse personnel;
  - c) weekly warehouse meetings;
  - d) double checking the orders placed by the purchasing manager; and
  - e) performing administrative duties due to the resignation of an administrative assistant.
- [35] Mr. Cooper was not cross-examined on most of his evidence regarding Mr. Adriano's roles and responsibilities at Kartners, although he was asked about negotiations with freight forwarders. Mr. Cooper acknowledged that Mr. Adriano had negotiated some improvements to specific aspects of Kartners' freight forwarding costs and services but not nearly to the extent asserted by Mr. Adriano. Mr. Cooper also testified there were times that Mr. Adriano negotiated without his authorization or knowledge and entered into arrangements that were not beneficial to the business. In re-examination, Mr. Cooper clarified that Kartners did not have an operations manager until after Mr. Adriano left.
- [36] Mr. Adriano also deposes to interviewing and hiring Kartners employees. During cross examination Mr. Cooper acknowledged that Mr. Adriano conducted some interviews and may have done some hiring but under his direction, stating more than once that given the size of the operation until more recently, everyone had to play the role of a "jack of all trades".
- [37] In his evidence and during submissions, Mr. Adriano emphasized the significance of a business trip to China in October 2017 that he took with Mr. Cooper where they met with Kartners' major supplier and visited various factories. Mr. Adriano suggested that flying business class and being the only employee to accompany Mr. Cooper were obvious indicators of his stature and seniority within the business.
- [38] Mr. Cooper testified that he took Mr. Adriano to China because Kartners needed to create a better process for filling orders around the time of Chinese New Years, when factories shut down. Describing the trip as a failure, because a better process was not negotiated, Mr. Cooper expressed significant disappointment in Mr. Adriano's performance during meetings.

- [39] Compared to the Initial Resume, Mr. Adriano's Post-Dismissal Resume includes a much-elevated description of his previous position and responsibilities with OIA Global Logistics in the Philippines:

### **Logistics Coordinator to VP - Operations and Finance**

Managed the accounting and finance department of the company. Supervised import and customs clearance operations and ensured compliance with best practices and company policies. Conducted high-level freight negotiations with air & ocean carriers, and packaged freight, warehousing, transportation and third party logistics services for customers.

- [40] At his examination for discovery, Mr. Adriano testified that he was actually the vice president of operations at OIA Global Logistics, and although the job duties identified in his Initial Resume were accurate, they were just part of the work he did for the company, which I understand was his family's business. In documents completed with a recruitment agency in 2011, Mr. Adriano's "functional role" with OIA Global Logistics is described as "SR Acct"; the report structure is described as "Family Business"; the number of staff as four; and his duties/achievements as: "supervising clerical staff, ensuring AP & AR was recorded properly, cash flow management; dealing with financing". Under professional skills, the document reads: "Prepared F/S; consolidations".
- [41] During cross-examination and at his examination for discovery, Mr. Adriano testified that, as a newcomer to Canada, he had to downplay himself and his resume, which included deleting his experience in logistics and inventory management.

### **The Dismissal**

- [42] Mr. Cooper terminated Mr. Adriano's employment during a short meeting on October 30, 2018. Mr. Adriano realized that morning that he was going to be fired after discovering two cheques in his name on the accounting system. During the meeting, Mr. Cooper provided him with a cheque for his final pay and another cheque for two weeks pay in lieu of notice, his record of employment, and a termination letter that included an offer of 14 weeks' pay. Although Mr. Adriano asserts that Mr. Cooper offered no explanation for the dismissal, Mr. Cooper states they did discuss Mr. Adriano's lack of qualifications. In his fifth affidavit, Mr. Adriano acknowledges mentioning that he needed to obtain a particular designation, but "only to update and add to my credentials and not because I lacked qualifications and experience". During the termination meeting, Mr. Cooper offered to provide Mr. Adriano with a letter of reference.
- [43] Mr. Adriano complains that, after the meeting, Mr. Cooper followed him to his workstation and watched him as he gathered his belongings and said goodbye to some of the other employees before escorting him to his car. He also complains that Mr. Cooper never provided him with a letter of reference, although the evidence contains correspondence between Mr. Adriano and Kartners' counsel that shows attempts were certainly made.

## Mr. Adriano's Job Search and Subsequent Employment

- [44] On December 2, 2019, Mr. Adriano began working full-time for Nomad Vanz, a small business with 10 employees that provides custom camper conversions of Sprinter vans. He describes his position as production manager. His "base" annual salary is the same as he was earning at Kartners: \$65,000.
- [45] Mr. Adriano deposes to applying for more than 50 jobs between November 2, 2018 and October 30, 2019 and to working closely with several "headhunters" at Robert Half Finance & Accounting until Kartners served the agency with a third party records application.
- [46] Mr. Adriano also deposes to working part-time for Westmark Tax ("Westmark") as a senior bookkeeper from March 11, 2019 to June 14, 2019 earning \$35 per hour, and for Rovaluation Automotive ("Rovalution") as a junior financial controller from May 2, 2019 to November 29, 2019, two or three hours per day. I note a letter from Westmark dated March 7, 2019 offered him employment as a bookkeeper, not as a senior bookkeeper. An email from Rovaluation dated April 5, 2019 sets out that they wanted him to work 30 to 40 hours per week for the first few months. In a subsequent email, however, Rovaluation offered Mr. Adriano \$35 per hour based on four hours per day for the first month, with compensation to be revisited after that.
- [47] Documents indicate that on November 2, 2018 Mr. Adriano applied for three positions that included: warehouse and logistics supervisor, senior logistics coordinator, and a logistics team lead. In late November and December 2018, he travelled to Los Angeles and the Philippines. His next application, made December 31, 2018, was for an assistant purchasing manager position. In January and February 2019, Mr. Adriano applied for over twenty positions. Many appear to be for management level or senior positions: import operations manager, assistant general manager, inventory manager, category manager, senior procurement manager/buyer, controller, senior logistics coordinator, purchasing manager, full cycle accountant, supply chain manager, senior logistics manager, senior accountant, and business analyst. I note, however, the "senior accountant" position did not require any professional accounting designations and he also applied for three positions as an accountant/bookkeeper, bookkeeper and office manager/bookkeeper. Further, Mr. Adriano was interviewed for two accountant positions, a bookkeeping position and an assistant purchasing manager position.
- [48] In July 2019, Mr. Adriano applied for three positions, including two for senior manager, warehousing and logistics. He attended an interview for a bookkeeper/accountant position in September 2019. In October 2019, he applied for ten jobs that included: procurement specialist, procurement manager, manufacturing procurement/supply chain officer, senior procurement manager, production and inventory control specialist, junior accounting clerk, bookkeeper and office manager. In November, he was interviewed for a logistics role, and positions as an office manager and as an accounting clerk.

- [49] In terms of earnings following his dismissal, an invoice to Sophie Burke Design dated in February 2019 sets out charges of \$865.25 for bookkeeping services in November and December 2018 and January 2019 in the amount of \$866.25. Another invoice dated May 13, 2019 charges Sophie Burke Design \$1,050 for bookkeeping services in February, March and April 2019.
- [50] Mr. Adriano calculates that he earned \$3,434.70 from Westmark between March 15 and June 14, 2019 (about 98 hours), and \$14,227 from Rovalution between May 2, 2019 and October 31, 2019 (406 hours). He does not explain why he worked less than the 20 hours per week proposed by Rovalution for the first month, or why he stopped working for Westmark in June 2019. In his fourth affidavit, and at his examination for discovery, however, he gave evidence about undergoing eye surgery that prevented him from working for a period of time.
- [51] Kartners' evidence includes the affidavit of Tina Burke who identifies herself as a recruitment specialist focused on financing and accounting with decades of experience and significant knowledge of employment practices and trends, particularly with respect to finance, accounting, payroll, credit and collections, treasury and accounts payable. Ms. Burke also worked as a senior level accountant for a number of large companies in various industries prior to becoming a recruiter. I note at this stage there was no dispute about the nature and admissibility of Ms. Burke's evidence and my own view is that it does not stray into inadmissible (expert) opinion evidence.
- [52] Based on Mr. Adriano's Initial Resume and his Post-Dismissal Resumes, Ms. Burke deposes that, had she been retained to assist him, she would have recommended positions such as accounts payable manager, accounts receivable supervisor, inventory manager or bookkeeper. The only controller type positions she would have recommended would be for very small companies where Mr. Adriano would report directly to the president and function more like a bookkeeper. Ms. Burke identifies the fact that Mr. Adriano does not have a CPA designation as disqualifying him generally from more senior roles including management level or true controller positions. Absent a CPA designation, she would not expect him to earn more than \$65,000 annually.
- [53] Ms. Burke also deposes that, in October 2018, the market for financing and accounting jobs was very good with many jobs available, adding: "[t]here would have been the potential to obtain a permanent role or at least temporary contract positions without difficulty". Finally, she deposes that Mr. Adriano's age is a "good age" to be seeking employment and not an impediment, particularly in the bookkeeping field where experience is highly valued.

## Reasonable Notice Period

- [54] Absent cause or an express notice term, contracts of employment include an implied term that obligates the employer to provide an employee with reasonable notice of their dismissal. Kartners concedes that Mr. Adriano was wrongfully dismissed, meaning he was dismissed without cause or reasonable notice. Based on Kartners' breach of its obligation to provide reasonable notice, Mr. Adriano is entitled to damages payable in lieu of the reasonable notice period.
- [55] What constitutes reasonable notice for a particular dismissed employee is determined with reference to a number of factors that include the character of the employment, the age of the employee, the length of service and the availability of similar employment having regard to their experience, training and qualifications: see *Bardal v. Globe & Mail Ltd.* (1960), 24 D.L.R. (2d) 140 (Ont. H.C.) at 145. The Bardal factors must be weighed together and no one factor given undue emphasis. They are also non-exhaustive. Further, it is appropriate to consider similar cases. In *Saalfeld v. Absolute Software Corporation*, 2009 BCCA 18, the Court of Appeal explained:
- [14] The exercise of looking to comparables and adjusting for differences permits a reasoned objective analysis, not only by a court, but by all who must determine reasonable notice in particular circumstances.
- [56] Relying on *Peterson v. Wilson Logistics*, 2003 BCSC 215, Kartners points to the notion of one month's notice for every year of service as a useful starting point or guideline.
- [57] Mr. Adriano takes the position that 13 months' notice is reasonable. Kartners argues four months is reasonable, given his particular circumstances.
- [58] To determine the reasonable notice period in this case, the factual dispute about the character of Mr. Adriano's employment with Kartners, and to a lesser extent the availability of similar employment, must be resolved. This depends in part on my assessment of the credibility of the evidence of Mr. Adriano and Mr. Cooper.

## Assessing Credibility

- [59] The proper approach to assessing the truthfulness of any interested witness's testimony was articulated many years ago in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) at 357:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[60] Bradshaw v. Stenner, 2010 BCSC 1398, at paras. 186-87, identified a number of factors that may be considered in assessing whether the evidence of a witness is not only truthful, but accurate:

- the capacity and opportunity of the witness to observe the events at issue;
- their ability to remember those events;
- the ability of the witness to resist being influenced by their interest in recalling events; or whether the witness has a motive to misrepresent the events;
- the internal consistency of the witness's evidence, meaning in this case whether there were inconsistencies between their affidavit evidence and their testimony, or inconsistencies between prior statements, discovery evidence and their affidavit evidence or their testimony during the summary trial;
- the external consistency of the witness's evidence, meaning whether their evidence harmonizes with or is contradicted by other evidence, particularly independent or undisputed evidence;
- whether the witness's evidence seems unreasonable, unlikely, or implausible, bearing in mind the probabilities affecting the case; and
- the witness's demeanour, meaning the way they present while testifying.

[61] Regarding the last factor, Faryna and other authorities have discussed the dangers of relying on demeanour alone to determine credibility, appreciating that how witnesses behave when they are lying or telling the truth is not well understood or universal: see *R. v. Jeng*, 2004 BCCA 464 at para. 54; *R. v. Tyers*, 2015 BCCA 507 at para. 18.

[62] My concerns about Mr. Adriano's evidence are likely apparent from the overview. Applying the test in *Faryna* and the relevant *Bradshaw* factors, I am left significantly concerned about his credibility. Invoking the language of *Bradshaw*, Mr. Adriano displayed a marked inability to resist being influenced by his interest throughout his evidence. More to the point, his portrayal of events and circumstances was consistently grandiose and self-serving, and reflected a preoccupation with status, his "stature", titles and prestige. These features harmonize with and inform my conclusion that Mr. Adriano has significantly exaggerated, if not misrepresented, his assigned roles and responsibilities at Kartners.

Sometimes the exaggeration was obvious, and sometimes it was evident from his lack of credentials, the undisputed evidence, Mr. Cooper's evidence and the probabilities affecting the case. The number and nature of the roles and responsibilities he asserts, describing himself as managing Kartners' overall operations, and identifying himself as the de facto operations manager are related examples of obvious exaggeration. Exaggeration of his roles specifically was apparent from the discrepancy between some of the roles and associated responsibilities set out in the Post-Dismissal Resume, for example, project management and coordinating on time delivery to customers, and logistics manager and negotiating with freight forwarders. In other words, Mr. Adriano associated significant titles with the performance of less significant

responsibilities.

- [63] Some of his other evidence, asserting very significant levels of responsibilities, such as supervising the warehouse manager and the purchasing and inventory manager was based on inferences he drew.
- [64] In this context, I conclude the change in Mr. Adriano's characterization of his past employment with OIA Global Logistics, from that of a comparatively minor position to vice president reflects exaggeration, even though I have no trouble accepting resumes are often tailored to target particular jobs and job markets.
- [65] During cross-examination, Mr. Adriano also exaggerated other past roles. For example, he refused to agree he was not management when questioned about his contract bookkeeping work with various small businesses in North Vancouver, also asserting the owners depended on him for all their financial needs and that he managed the financial activities of those companies. Mr. Adriano was also unreasonable and unresponsive in other way. For example, he refused to acknowledge that a CA or a CGA designation was not required for his position with Kartners when he applied even though he has neither, because he was not referred to a copy of the job posting.
- [66] His demeanour during cross-examination was also somewhat troubling. Understandably angry perhaps, he was combative and also prone to editorializing.
- [67] In contrast, Mr. Cooper's evidence was far more balanced and reasonable on the whole, bearing in mind the probabilities affecting the case. Unlike Mr. Adriano, however, Mr. Cooper did not struggle to acknowledge facts that did not align with his own interest.
- [68] In saying this, I have not overlooked the apparent disconnect between Mr. Adriano's very large bonus and increase in salary around the end of 2017, Mr. Cooper's evidence about the failed trip to China in the fall of 2017 and Mr. Adriano's lack of qualifications and his skill becoming a problem once Kartners became a larger operation. I note that Mr. Cooper was not challenged on his evidence that Mr. Adriano's bonuses in 2016 and 2017 reflected the success of the business during those years. Further, as I have said, Mr. Cooper made it clear that Mr. Adriano had been a valued employee and contributor. I have no doubt he was industrious and ambitious to a fault.
- [69] Unsurprisingly then, I have determined that Mr. Adriano's disputed evidence must be approached cautiously and with one minor exception which I will come to, I can safely prefer the evidence of Mr. Cooper.
- [70] I will now address the Bardal factors.

## Nature of Employment

[71] Largely accepting Mr. Cooper's evidence regarding the nature of Mr. Adriano's employment with Kartners, and there being no dispute he was hired to perform a bookkeeping role which had the potential for significant expansion as the company grew, I find that overtime Mr. Adriano performed an enhanced bookkeeping/administrative role, along a fairly wide range of other responsibilities related to suppliers, customers and freight forwarders. While Mr. Adriano completed some interviews and even some hiring, it is clear he never fulfilled a middle or senior management role and was not responsible for supervising other employees, except perhaps one temporarily. Although Mr. Adriano was encouraged to use the title of controller, he did not have the qualifications or the skills to fulfill this role when the size of Kartners' operations grew. By the time he was dismissed, Mr. Adriano had been assigned to perform an inside sales support role.

## Length of Service

[72] Although Mr. Adriano initially worked part-time, I consider his length of service to be five years.

## Age

[73] Mr. Adriano was 53 years old when he was dismissed. Kartners relies on Ms. Burke's evidence to suggest his age would not have been an impediment to finding employment, particularly in the bookkeeping field where experience is highly valued. The cases summarized below indicate that, for employees over 50, age is often found to be a factor in assessing notice. Giving limited weight to Ms. Burke's evidence, and bearing in mind the absence of other evidence that Mr. Adriano's age may have had a negative impact on his job search, I view his age as a neutral factor.

## Availability of Comparable Employment

[74] Mr. Adriano does not complain about a lack of comparable employment. Instead, he emphasizes how quickly he applied for a multitude of positions and identifies Kartners' "failure" to provide a letter of reference as a significant barrier.

[75] Again, Kartners relies on Ms. Burke's evidence, and the suggestion that Mr. Adriano found part-time employment as soon as he began applying for suitable positions, to argue there was an abundance of comparable jobs or contract work available at the time of his dismissal. While I accept Ms. Burke's evidence about what positions were suitable for Mr. Adriano based on his work experience and his lack of qualifications given her professional experience, I place less weight on her evidence regarding the job market, simply because it is vague with respect to nature of the finance and accounting jobs apparently available when Mr. Adriano was dismissed.

- [76] While it would appear that most of the positions Mr. Adriano applied for prior to March 2019 reflected his unrealistic view of his roles and responsibilities at Kartners, some of his applications were appropriate. Yet he began working only part-time with Westmark on March 15, 2019 and with Roalution in April 2019.
- [77] Furthermore, although I have rejected many of his assertions about the nature of his employment with Kartners, I have also found that his role was not simply that of a bookkeeper and involved performing a diversity of tasks related to many different aspects of Kartners' business. Bearing in mind that he was never assigned the management roles or the high degree of responsibility he professed, comparable employment for him was not strictly limited to bookkeeping or administrative positions.

### Other Considerations

- [78] Based on *Shinn v. TBC Teletheatre B.C.*, 2001 BCCA 83 at paras. 11 and 25 and the evidence in this case, I accept that Kartners' "failure" to provide a reference letter is not a factor that is properly considered in determining the reasonable notice period. In any event, for reasons I will come to, I am not satisfied that Kartners "failed" to do so.
- [79] To the extent Mr. Adriano relies on eye surgery or a health issue in determining reasonable notice, I accept Kartners' submission that a dismissed employee's health is not a reason to increase the length of the notice period: see *Waterman v. IBM Canada Limited*, 2010 BCSC 376, *aff'd* on other grounds 2013 SCC 70.
- [80] Mr. Adriano relies on a number of cases in support of his position that a notice period of 13 months is appropriate, which I summarize as follows:
- a) *Corey v. Kruger Products L.P.*, 2018 BCSC 1510: the plaintiff was a 58-year-old maintenance supervisor, earning \$104,040 at termination, who supervised 14 specialized employees (machinists and millwrights). His age and the lack of available similar employment were factors that justified a somewhat longer notice period. Eight months' notice was awarded.
  - b) *O'Dea v. Ricoh Canada Inc.*, 2016 BCSC 235: the plaintiff was 57 years old and an experienced sales person in the office equipment field who had worked for the defendant for seven years. His age was accepted as making him less marketable as a salesperson. Nine months' notice was awarded.
  - c) *Nicholson v. Masonite International Corporation*, 2014 BCSC 1247: the 45-year-old plaintiff was terminated after two and a half years from his position as a regional controller for Western Canada, earning a base salary of \$110,000, plus potential variable pay of an additional 15%. It was agreed he was a professional employee with mid-level management and significant financial responsibilities. Six months' notice was found to be appropriate.

- d) *Morris v. ACL Services Ltd.*, 2014 BCSC 1580: the plaintiff, a senior software developer, was terminated after a long period of missed work and seven and a half years' employment at the age of 52. His age was found to be a significant factor in assessing notice. Ten months' notice was awarded.
  - e) *Mackie v. West Coast Engineering Group Ltd.*, 2009 BCSC 1775: the plaintiff, a production manager found to be a middle management employee, was dismissed after 21 months. Unique circumstances were given limited weight in assessing nine months' notice as reasonable. They included his wife giving up a well paid job in Germany to move to Canada with him, which resulted in significant income loss and training cost.
  - f) *Linsdell v. Squamish W K Enterprises Inc.*, 2003 BCSC 188: the plaintiff, a 52-year-old manager of Burger King, was terminated about three years after moving to Squamish to take the job. He remained unemployed at trial. His age was found to be a significant factor in the assessment of notice. Six months' notice was awarded.
  - g) *Mitchell v. Paxton Forest Products Inc.*, 2001 BCSC 1802, *aff'd* 2002 BCCA 532: after working for 23 months as the mill manager, the 53-year-old plaintiff was terminated. He too remained unemployed at trial and the court found no similar employment was available. Nine months' notice was assessed as reasonable.
- [81] Almost all of these cases involve senior or management positions not comparable to Mr. Adriano's role with Kartners and none awarded 13 months' notice. They are, as Kartners suggested, of little to no assistance.
- [82] The same is true however of most of Kartners' cases. Somewhat similar is *Lelievre v. Commerce and Industry Insurance Company of Canada*, 2007 BCSC 253. The plaintiff was 53 years old when dismissed from her job as a sales manager after six years. Although described as a manager, she had no managerial responsibilities and supervised only one part-time staff person, although she was responsible for managing and overseeing a budget of approximately \$6 million. Following the guideline of one month for each year of service, she was awarded six months' notice.
- [83] Considering the Bardal factors in the context of this case, and absent case law establishing a range, much like *Lelievre*, I find that one month for every year of service provides a useful rule of thumb and find the period of reasonable notice to be six months.

## Damages in Lieu of Reasonable Notice

- [84] Damages are meant to compensate the plaintiff for income he would have earned during the notice period. Earnings during the notice period must be deducted, excepting income earned from a second employer that could have been earned, had the plaintiff continued with the first employer: see *Pakozdi v. B & B Heavy Civil Construction Ltd.*, 2018 BCCA 23 at para. 45.

- [85] The parties agree Mr. Adriano's annual salary at the time of dismissal was \$65,000, which equates to \$5,416.66 per month. Five months' equals: \$27,083.30.
- [86] The parties dispute whether his earnings from Sophie Burke Design should be deducted. Mr. Adriano characterizes them as supplemental, rather than replacement income, asserting that during his employment with Kartners he continued to earn small amounts of income from contract work as a bookkeeper. His vetted tax returns for 2015 through 2016 appear to confirm this. His 2017 and 2018 tax returns are not in evidence and he does not specifically depose to providing bookkeeping services to Sophie Burke Design prior to being dismissed. His Post-Dismissal Resume specifies, however, that he had been doing so since 2012. I see no reason for him to invent this detail. Further, given the pattern established by his earlier tax returns, the fact that post-dismissal invoices to Sophie Burke Design include services performed in November 2018, and the small earnings from contract bookkeeping before and after dismissal, I accept Mr. Adriano continued to provide bookkeeping services while employed at Kartners. I conclude his earnings from Sophie Burke Design do not constituted an avoided loss. They are therefore not required to be deducted.

## Bonus

- [87] Mr. Adriano submits that, in addition to an award based on his annual salary, he is entitled to the bonus payment he would have received in 2018 plus a pro-rated bonus amount for the balance of the reasonable notice period.
- [88] Kartners takes the position he should not receive any amount for the loss of a bonus because bonuses were not an integral part of his compensation. Instead they were entirely discretionary. Alternatively, if an award is made for the 2018 Christmas bonus, Kartners argues there is no evidence that would allow the court to assess a pro rated amount for 2019.
- [89] Despite his evidence that substantial bonuses were a term of his compensation, Mr. Adriano agreed there was no guarantee a bonus would be paid. At the same time, the evidence establishes that starting in 2014, each employee working at Kartners when bonuses were paid, in or about the end of each year, received a bonus, although Mr. Cooper suggested the success of the business during the preceding year determining whether bonuses would be paid at all. Certainly, the success of the business was a significant consideration in determining the amount of the bonuses. The size of Mr. Adriano's bonuses increased each year and significantly in 2016 and 2017.
- [90] Although I accept that bonuses were also paid as a way of expressing the company's thanks for an employee's hard work, given this patter and the size of Mr. Adriano's bonuses, I reject Mr. Cooper's evidence that they were an alternative to providing employees with a Christmas gift. It makes little sense that an employee such as Mr. Adriano earning between \$55,000 and \$65,000 would have received annual gifts worth thousands of dollars.

- [91] I conclude that by 2018 Kartners had a well-established and invariable practice of paying each active employee a bonus at the end of the year.
- [92] Very recently, in *Matthews v. Ocean Nutrition Canada Ltd.*, 2020 SCC 26, the Supreme Court of Canada clarified the proper approach to determining whether the amount of damages in lieu of reasonable notice should include bonus payments:
- [52] First, courts should "consider the [employee's] common law rights" (para. 30). That is, courts should examine whether, but for the termination, the employee would have been entitled to the bonus during the reasonable notice period. Second, courts should "determine whether there is something in the bonus plan that would specifically remove the [employee's] common law entitlement"
- [93] In discussing the notion of entitlement to the bonus, the Court emphasized that the purpose of damages in lieu of notice is to put the employee in the position they would have been in, had the employer performed the contract, meaning had the employee continued to work through to the end of the notice period. The focus in other words, is on what the employee would have received.
- [94] Applying *Matthews* and turning to consider what Mr. Adriano would have received but for the termination, I have no doubt he would have received a bonus at the end of 2018, given the period of reasonable notice and Kartners' well-established practice. Accepting that bonuses were not paid to employees no longer working for Kartners when bonuses were paid at the end of the year, I do not accept that Mr. Adriano is entitled to a pro-rated bonus for the balance of the notice period in 2019.
- [95] In other words, I accept that, absent Kartners' breach of its contractual obligation to provide reasonable notice, Mr. Adriano would have received a 2018 bonus but no bonus income for 2019 because of the length of the notice period and the practice of only paying bonus to those who were active employees.
- [96] In resolving the question of the amount of the bonus Mr. Adriano would have received in 2018, I rely on Mr. Cooper's evidence about what he paid to two other employees earning similar salaries: \$6,000 and \$3,000. He also testified he would have paid Mr. Adriano something within that range. Although well below what Mr. Adriano received in 2017, given the absence of other evidence and accepting Kartners' discretion to determine the amount, I can do no better than to award \$4,500, the average of those two amounts.

## Failure to Mitigate

- [97] A person who is wrongfully dismissed has a duty to take reasonable steps to obtain equivalent employment. The duty is not an obligation to the former employer. Rather it is a "duty to take such steps as a reasonable person in the dismissed employee's position would take in his own interests - to maintain his income and his position in his industry, trade or profession": see *Forshaw v. Aluminex Extrusions Ltd.* (1989), 39 B.C.L.R. (2d) 140 at 144. The

defendant bears the burden of proving a failure to mitigate by establishing not only that the plaintiff failed to take reasonable steps, but if he had, he would likely have found equivalent employment. The applicable period is the period of reasonable notice.

- [98] Kartners argues Ms. Burke's evidence regarding the job market and Mr. Adriano's evidence regarding his job search meet the onus. Again, asserting Mr. Adriano effectively delayed his job search for two months, then applied for many jobs he was not qualified to perform, before finding comparable work as soon as Mr. Adriano took reasonable steps.
- [99] I have already observed that Mr. Adriano began applying for some although not many comparable positions in January 2019. It was not until March 2019 that he was hired for a part-time position with Westmark and April 2019 with Rovalution.
- [100] I have also commented that comparable employment for Mr. Adriano was not confined to bookkeeping/administrative positions, given the breadth of his experience at Kartners, and I have given little weight to Ms. Burke's evidence regarding the job market, given its vagueness.
- [101] The reasonable notice period extends to March 30, 2019.
- [102] Given all these considerations I am not able to conclude that, had Mr. Adriano applied for more suitable positions than he did earlier on, he would have obtained full-time comparable employment prior to March 30, 2019. Kartners has therefore not established that he failed to mitigate.
- [103] Accordingly, Mr. Adriano is entitled to damages in lieu of notice equal to \$27,083.30, plus \$4,500 for the 2018 bonus, less his earnings from Westmark up to March 30, 2019.

### Aggravated Damages

- [104] As a general rule, no damages are available to an employee for the actual loss of their job. Employment contracts obligate employers to act fairly and in good faith in the manner of dismissal. Aggravated damages are available when an employer engages in conduct during the dismissal that is unfair or in bad faith, including untruthful, misleading, or unduly insensitive behaviour, where it results in a foreseeable injury such as mental distress that transcends the ordinary upset or distress associated with being dismissed: see Nicholson at para. 57 and Bailey v. Service Corporation International (Canada) ULC, 2018 BCSC 235.
- [105] Mr. Adriano's claim for aggravated damages is based on Mr. Cooper's conduct after the termination meeting, namely following and watching over Mr. Adriano as he prepared to leave before "rushing" him out of the building, as well as his "failure" to provide a letter of reference.

- [106] Determining whether Mr. Adriano is entitled to aggravated damages involves two primary inquiries. The first is whether he has established that Kartners' conduct in the course of dismissal was unfair or in bad faith. If so, the second inquiry is whether Mr. Adriano has established that he suffered mental distress as a result of that conduct, beyond the normal upset expected from the dismissal itself.
- [107] Turning to the first inquiry, in my view, the conduct he complains of is not sufficient to establish that Kartners acted in bad faith or unfairly. During the termination meeting itself, Mr. Cooper was respectful and appropriate. The content and tone of the termination letter is much the same. There is no suggestion that Mr. Cooper did anything after the meeting beyond closely monitoring and perhaps rushing Mr. Adriano as he prepared to leave and while escorting him from the building. No doubt embarrassing and upsetting for Mr. Adriano, I cannot say Mr. Cooper's conduct was unduly insensitive.
- [108] Regarding the alleged failure to provide a reference letter, Shinn provides that an employer is under no obligation to give a reference letter and, therefore, the failure to provide one cannot be found to be unfair or in bad faith. In any event, I cannot say that Kartners "failed" to do so. There is no evidence that Mr. Adriano made any request for the reference letter discussed during the termination meeting after being dismissed. Instead of initiating the process himself, prior to March 16, 2019, Kartners' counsel asked him what skills he wished Kartners to emphasize in the letter. Emails between Mr. Adriano and Kartners' counsel from March 16 to 21, 2019 indicated she also asked him to provide information that he thought would be helpful to his job search, indicating Kartners would then draft a letter. In response, Mr. Adriano sent his own draft reference letter that exaggerated and overstated his duties and responsibilities in much the same way as his Post-Dismissal Resume. Mr. Cooper deposes that he understood Mr. Adriano had found employment by this time. There was no further communication about a reference letter until counsel for Kartners wrote to Mr. Adriano on September 24, 2019. She too set out that she understood he had found employment but if he still wanted a reference letter, Kartners was happy to work with him on preparing a letter that it viewed as accurate and that he considered helpful.
- [109] Having failed to establish bad faith or unfair conduct, it is unnecessary to proceed to the second inquiry. For completeness sake, however, I note that Mr. Adriano has not provided any evidence that would suggest let alone establish he suffered from mental distress beyond the emotional upset and distress that inevitably results from a dismissal.
- [110] His claim for aggravated damages is therefore dismissed.

## Receipt of Employment Insurance Benefits

[111] Mr. Adriano seeks an order that Kartners pay the damage award within 15 days which Kartners opposes based on the provisions of the Employment Insurance Act, S.C. 1996, c. 23. Kartners advises that Mr. Adriano received employment insurance benefits starting November 11, 2018 and until at least June 15, 2019. Section 46(1) of the Employment Insurance Act provides:

46(1) If under a labour arbitration award or court judgment, or for any other reason, an employer becomes liable to pay earnings, including damages for wrongful dismissal to a claimant for a period and has reason to believe that benefits have been paid to the claimant for that period, the employer shall ascertain whether an amount would be repayable under section 45 if the earnings were paid to the claimant and if so shall deduct the amount from the earnings payable to the claimant and remit it to the Receiver General as repayment of an overpayment of benefits.

[112] Accordingly, there will be no order regarding the timing of the payment of the damages awarded.

## Costs

[113] In the event there is a dispute regarding the appropriate order for costs, the parties have leave to schedule a brief costs hearing before me.

"Fleming J."

## Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/21/01/2021BCSC0166.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/adriano-v-0886899-b-c-ltd-kartners-bathroom-accessories-2021>

Prepared on 28 October 2026 · Esheria