Date of Release: July 6, 1995 NO. C927076

VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:)

)

GERRY PETIT)

) REASONS FOR JUDGMENT

PLAINTIFF)

) OF THE HONOURABLE

AND:)

) MR. JUSTICE HARVEY

INSURANCE CORPORATION OF)

BRITISH COLUMBIA)

)

DEFENDANT)

R.H. Hamilton and N. Mitha Counsel on behalf of the Plaintiff

J. Sullivan and S. Wells Counsel on behalf of the Defendant

Heard at Vancouver: June 19 - 23, 1995

1 The plaintiff's action is for damages for wrongful dismissal.

2 Counsel for the defendant submits it had just cause to terminate the employment of the plaintiff, being his dishonest conduct. He submits as a matter of law dishonesty is always cause for dismissal.

3 Counsel for the plaintiff submits the plaintiff's actions are not to be considered in a vacuum beginning on a certain day and ending a few moments later. He submits it is the

entirety of the plaintiff's conduct which spanned over one month which is to be considered in this matter before one can conclude whether the plaintiff was dishonest. He submits upon consideration of this conduct the plaintiff was honest.

THE FACTS

4 The plaintiff is presently 56 years of age. He will be 57 on October 16, 1995.

5 The plaintiff has spent almost his entire working career in the insurance industry in personal injury claims adjusting. He entered employment by I.C.B.C. in January 1974 virtually at its inception. In 1992, his employment was that of a unit manager at the South Richmond Claims Centre where he supervised eight or nine adjusters. He reported directly to the Claims Centre manager, Mr. Gordon Fleming.

6 Mr. Fleming's superior was Mr. Barry Ringham. Mr. Ringham's title is that of manager of claims operations and includes the supervision of a number of claims centres. While Mr. Ringham had little direct communication with the plaintiff, what communication he had left the plaintiff with the impression he was not considered to be in Mr. Ringham's "good books". It appears this feeling may have been engendered by reason of what occurred during the plaintiff's 1988 performance review and shortly thereafter with regard to an action plan.

7 In the course of his eighteen year working career with I.C.B.C., the plaintiff served his employer honestly and faithfully. He had never received any discipline from I.C.B.C. His last complete performance rating for the year 1991 reads, in part, "achieving overall job requirements."

8 The events under consideration in this case commence on July 14, 1992 and end on September 2, 1992 when the plaintiff's employment with I.C.B.C. was terminated for cause.

9 On July 14, 1992, the plaintiff was driving to work when he witnessed a woman driving a white Ford Tempo motor vehicle in an erratic and dangerous manner. The plaintiff's attention was first drawn to this vehicle when it approached his vehicle from the rear at a speed such that he expected his vehicle might be struck. From this point forward, the plaintiff observed the vehicle, noticing that it changed lanes, overtook some vehicles, and cut in front of others. At a point in the driving, the plaintiff was able to note the license plate number

of the vehicle. The plaintiff says he was angry and upset about the driving of this unknown motorist, considering she endangered his safety and that of other persons using the highway.

10 The plaintiff arrived at the South Richmond Claims Centre at about 7:45 a.m. at which time he noticed in the parking lot a white Ford Tempo similar to the vehicle he had observed earlier in the morning. He noted that the license plate number of the vehicle had the same first three digits as the license plate number which he had recorded and that the remaining three numbers were close to those he had recorded. When he realised that the white Ford Tempo in the parking lot was a vehicle driven by his immediate superior, Mr. Fleming, it occurred to him the Ford Tempo vehicle he had observed being driven erratically was one which was also owned by I.C.B.C. and, in keeping with the hierarchy within the Corporation, was probably driven by a senior manager. He was angered that a senior manager of I.C.B.C. would drive in such a dangerous and erratic manner.

11 As was often the case, the plaintiff met with Mr. Fleming in the coffee room. He discussed his concern regarding the driving he had observed and his belief that the vehicle was probably being driven by a senior manager of I.C.B.C. During the course of their discussion Mr. Fleming suggested the names of two women employees and then a third name, being that of Leona Stewart, a Claims Centre manager, whom he knew would have been travelling on the highway at this time. Mr. Fleming recalls the plaintiff looking up the license number on the I.C.B.C. computer system.

12 During a coffee break later that morning, Mr. Fleming said the plaintiff informed him he was going to look up Ms. Stewart's driving record on the system computer. He recalls being shown the driving record of Ms. Stewart later in the day. The driving record disclosed nine driving offences for exceeding the applicable speed limits within the previous five year period.

13 The information which the plaintiff accessed was available to virtually every employee of I.C.B.C. who had the use of a computer terminal. The information was obtained from the Superintendent of Motor Vehicles and kept within the computer system for access by employees of I.C.B.C. in the course of their work.

14 It is apparent Mr. Fleming was fully aware of the plaintiff accessing the information from the computer. In cross-examination, Mr. Fleming was asked whether he considered the use of the computer to access the information in question constituted a breach of I.C.B.C.'s code of ethics to which he replied:

I don't think it did because it involved a company (I.C.B.C.) vehicle and company business which is not against the code of ethics.

15 I mention in passing I consider Mr. Fleming's evidence in this regard to be consistent with one provision of the said code requiring employees to report incidents of abuse of such information.

16 In a similar vein, the plaintiff says the idea that his actions in accessing this information might offend I.C.B.C.'s code of ethics did not occur to him. In his mind, the accessing was clearly for business purposes as it related to an employee of I.C.B.C., operating a vehicle owned by I.C.B.C. on company business.

17 The plaintiff concluded he should pursue the matter. He was reluctant to communicate his concern to Mr. Ringham because of what he considered was their unsatisfactory past relationship. In his view, leaving the matter for Mr. Fleming would have probably produced the same result as would the writing of a letter identifying himself. He decided that he would write an anonymous letter to the then president of I.C.B.C., Ms. Robyn Allan, in which he accurately described the erratic and dangerous driving of the woman motorist but in terms that suggested the letter came from a person not employed by I.C.B.C. and stated the license plate number of the vehicle and that it was owned by I.C.B.C.

18 The plaintiff's attempt at anonymity was destined to fail. He had forgotten or was unaware that his computer terminal used to access the information from the computer could be traced as to its location and the time or times of its use.

19 The anonymous letter is dated July 15, 1992. I assume it was received by Ms. Allan on or about that time. The evidence is silent as to what occurred until August 6, 1992. On that date, the President's Committee Meeting Minutes indicate that Mr. Derek Thomas, the Manager of Human Resources, was instructed to review "the violation of the vehicle and driver's

license data bases". On the following day, Mr. Thomas instructed a staff computer expert to review the computer monitoring files. This review indicated that Ms. Stewart's driver files were accessed on July 14, 1992 in such a manner to obtain a license number and a driving record and that the accesses were made from a terminal located in the office of the plaintiff with the computer access code being that of the plaintiff.

20 Mr. Thomas instructed Mr. Ringham to interview the plaintiff on August 14th "to ascertain Mr. Petit's accounting and explanation of these events". Mr. Ringham was made aware of the anonymous letter but was not provided with a copy.

21 Mr. Ringham did not turn the matter over to Mr. Fleming, who was completing a vacation prior to his retirement, nor did he involve the new Claims Centre manager recently appointed to that office.

22 Some time during the late afternoon of Friday, August 14, 1992, Mr. Ringham arrived at the Richmond Claims Centre. Mr. Ringham arrived at the Claims Centre unannounced. He had not given the plaintiff advance notice or warning of any kind that he would be attending upon him for the purpose of investigating events which had occurred on or about July 15th and July 16th. He proceeded to the plaintiff's office in the building. The plaintiff was on the phone at the time and observed Mr. Ringham apparently waiting to see him.

23 After entering the plaintiff's office, Mr. Ringham informed the plaintiff that an anonymous letter had been written to Ms. Allan and that Leona Stewart's driving record had been accessed from the plaintiff's computer terminal. He informed the plaintiff that he considered this to be a serious violation of the code of ethics of I.C.B.C. Mr. Ringham asked Mr. Petit if anyone else had access to his computer terminal I.D. and whether he had any reason to access Leona Stewart's driving record. The plaintiff answered in the negative to both questions.

24 Mr. Ringham then asked the plaintiff if he had written an anonymous letter to the president of I.C.B.C. The plaintiff denied knowledge of the anonymous letter.

25 The plaintiff says the matters raised during the meeting took him by surprise and that he was scared. He became very apprehensive with the assertion of Mr. Ringham that he was

investigating a serious breach of the code of ethics of I.C.B.C. He had previously understood the accessing of the computer data was appropriate, the matter having been discussed openly and candidly by him with his immediate superior, Mr. Fleming. He was also made apprehensive by the very presence of Mr. Ringham as his inquisitor.

26 For these reasons, he says he responded as he did to gain some time. Shortly after Mr. Ringham left the meeting, he says he decided that he had to contact him and admit that he had lied. He searched the Claims Centre premises but was unable to locate Mr. Ringham. He concluded as it was the end of the working day, Mr. Ringham had probably left by automobile to drive to his home.

27 After arriving home, that evening he wrote a letter to Mr. Ringham in which,*inter alia*, he admitted he had lied to him in relation to his responses to the two inquiries made of him, he was extremely sorry for what he had done, and requested that he be given an opportunity to discuss the matter further with him.

28 He did not attempt to communicate with Mr. Ringham by telephone as I understood his intention to be he wished to meet with Mr. Ringham for the purpose of delivering the letter to him and "to discuss the matter further with you if I might". In the early morning the next day, Saturday, the plaintiff drove to the Ringham residence in White Rock. He was informed Mr. Ringham was not home, and was playing golf. The plaintiff left the letter with a member of Mr. Ringham's family requesting that it be given to him on his return. Mr. Ringham did not communicate with him during the weekend.

29 The plaintiff saw Mr. Ringham next on Monday, August 17, 1992 at the South Richmond Claims Centre. The conversation focused on the anonymous letter.

30 Mr. Ringham reported to Mr. Thomas and Mr. H.G. Reid, Vice-President Claims, by way of his memorandum dated August 17, 1992. In that memorandum, he stated the following:

I asked Gerry if he had any previous dealings with Leona, any underlying reason to treat this situation involving a fellow manager in what has been described as a malicious act. Gerry again replied that he had only met Leona once, did not really know her, and simply wanted to get his point across to senior management.

Gerry did mention something interesting in his defence. He mentioned that Robyn Allan had been asking for input from staff i.e. call me, write in if you have any questions, etc. Gerry mentioned that he may have been encouraged to do exactly that with this situation dealing with Leona's driving habits.

31 Later in the memorandum appears the following:

I told Gerry that as this was a serious breach of our code of ethics dealing with access to information, he was suspended until further notice. I mentioned to him that details of this situation were to be discussed at the President's Committee level and decisions made after the evidence was weighed and carefully considered.

32 The memorandum also makes reference to Mr. Ringham's speaking to Leona Stewart on the morning of July 17, 1992 at which time she apparently admitted that she was driving a company vehicle on the highway and morning in question. She is reported to have stated while she may have been passing or moving in and out of congestive traffic, she was not speeding or driving in a dangerous manner.

33 In his memorandum dated August 17, 1992 to the President's Committee, Mr. Thomas reports upon Mr. Ringham's investigation and concludes with the following statement:

This concludes the investigation requested. Further discussions will be held with Mr. Petit once all of the issues have been examined. Suffice it to say that Mr. Petit's actions constitute a serious breach of conduct and will be addressed with him once his employment record has been reviewed.

34 Mr. Ringham wanted to fire the plaintiff. His superiors, including certain members of the President's Committee, requested him to obtain more information and, particularly, to speak to Mr. Fleming because of his involvement in the matter according to the plaintiff. Mr. Fleming was on holiday in the Kelowna area. Mr. Ringham was able to communicate with him by telephone on August 26, 1992. In a memorandum dated August 26, 1992, Mr. Ringham reports with regard to his telephone conversation with Mr. Fleming. Towards the end of that memorandum, the following is stated:

If all this info from Gord is accurate, then Gerry certainly lied or distorted the truth about his discussions with Gord Fleming.

35 Mr. Fleming was called as a witness on behalf of the defendant at trial after Mr. Ringham had given evidence. While there are some differences between Mr. Fleming's evidence as recorded in the memorandum prepared by Mr. Ringham and his evidence at trial, including cross-examination, I did not consider at the time I heard the evidence of Mr. Fleming, that there were variations of significance. I was not directed to evidence which would support a characterization of Mr. Fleming's evidence such as to say that the plaintiff lied or distorted the truth about his discussions with him. Counsel for the defendant was not able to direct me to such evidence.

36 Mr. Ringham had a final interview with the plaintiff with regard to the events in this matter held at the Newton Claims Centre on Monday, August 31, 1992. During the course of that interview, Mr. Ringham asked the plaintiff questions, a number of which related to determination of the identity of Leona Stewart as the driver of the I.C.B.C. vehicle on the highway. In the perspective of these questions, he was asked:

What was your real motive or incentive in writing the anonymous letter about Leona?

37 His answer, in part:

When I took the plate number down I was upset, I didn't know what I was going to do with it. I knew I had to do something. I felt the driver, whoever it was, should be taken to task by someone. I realized it was wrong when I wrote the anonymous letter but I did not want to get into a verbal argument with anyone over this. It had nothing to do with Leona personally.

38 In his handwritten notes made in preparation for his interview with the plaintiff on August 31, 1992, Mr. Ringham has included "Go over discussion with Gord Fleming."

39 Mr. Ringham did not "go over" the telephone conversation he had with Mr. Fleming, nor make reference to the fact that he had such a conversation with Mr. Fleming during the course of the interview on August 31, 1992.

40 On September 2, 1992, Mr. Ringham informed the plaintiff by telephone that the decision had been made to terminate his employment with the Corporation for cause effective that date. A letter dated September 2, 1992 was forwarded to the plaintiff.

FINDINGS OF FACT

41 Upon consideration of this evidence, I find the following facts:

(a) the plaintiff had no ulterior motive in reporting the driving of Leona Stewart to I.C.B.C. At the material time, he did not know Ms. Stewart or have any reason to harm her. Further, there is no evidence to indicate the reporting of the driving of Ms. Stewart was for any purpose other than to make the defendant aware of such driving and the driving record of Ms. Stewart;

(b) at the time of the accessing of the information from the computer, the plaintiff had an honest belief that what he had done was appropriate with the approval, tacit or otherwise, of his immediate superior, Mr. Fleming. In this regard, I accept that part of Mr. Fleming's evidence which I have quoted,*supra*, related to this aspect of the matter. I find, therefore, that when the plaintiff accessed the information from the computer, he did not think that anything that he was doing was in breach of the implied term of his contract of employment or in any way a breach of the I.C.B.C. code of ethics;

(c) on the late afternoon of Friday, August 14, 1992 when the plaintiff was confronted by Mr. Ringham at his office in the Claims Centre, I accept he was surprised, scared and apprehensive;

(d) following that meeting the plaintiff did attempt to find Mr. Ringham in the Claims Centre premises for the purpose of correcting his lies and express his remorse for what had occurred; and,

(e) the reason the plaintiff did not attempt to telephone or otherwise communicate with Mr. Ringham Friday evening was because he wished to meet with him personally to deliver a letter hoping he would then be given an opportunity to discuss the matter further with him.

42 With regard to this last finding of fact, I am satisfied upon consideration of the evidence bearing upon this question, the plaintiff did not use the time interval to reflect upon what he had done and to craft a letter to best serve his interests realizing that it would eventually be determined he must be the person who accessed the information and wrote the anonymous letter. In this regard, if he had been able to find

Mr. Ringham before he left the Claims Centre premises shortly after the meeting, I am satisfied he would have then told him what he later put in his letter.

THE LAW

43 There is no dispute as to the applicable law where dishonesty is alleged as the cause for dismissal. In this regard, as Hollinrake J.A. stated in ***McPhillips v. The British Columbia Ferry Corporation*** (1994), 94 B.C.L.R. (2d) 1:

Dishonesty is always cause for dismissal because it is a breach of the condition of faithful service. It is the employer's choice whether to dismiss or forgive.

44 Counsel differ, however, in their respective submissions as to what evidence can properly be considered to determine what is dishonesty or dishonest conduct. Put simply, counsel for the defendant submits when the plaintiff lied to Mr. Ringham during the meeting which occurred during the late afternoon of August 14, 1992, he was guilty of dishonest conduct, the Rubicon was crossed, and that nothing the plaintiff did thereafter or could have done would operate to change the characterization of his conduct. He submits whatever the plaintiff did subsequently, to explain his dishonest conduct would only be relevant to I.C.B.C.'s decision whether to dismiss or forgive.

45 In this regard, counsel for the defendant submits that if the plaintiff had been able to find and communicate with Mr. Ringham at the Claims Centre within minutes after the end of their meeting on August 14, 1992, and had admitted his lies, such conduct on the plaintiff's part would have made no difference in law to the defendant's position.

46 Counsel for the plaintiff describes this approach as "examining the plaintiff's conduct in a vacuum" and submits that it ignores the direction of the courts such as, for example, provided by the direction of the British Columbia Court of Appeal in ***Jewitt v. Prism Resources*** (1980), 30 B.C.L.R. 43 at 54 where Taggart J.A. said the following:

It is for the trial judge on the evidence before him, drawing such inferences as that evidence warrants to determine whether there was cause for the dismissal of the employee...There was little divergence in their testimony on the principal matters in issue and, consequently the judge was not faced with difficult

questions of credibility. He was, however, faced with the difficult problem of assessing the character of the appellant and the reasonableness of the actions of Mr. MacDonald on learning that his signature had been traced. Here the trial judge enjoys an advantage that this court does not for he saw and heard those two men and it is on the basis of their testimony and the inferences that may be drawn from it that the central issue in this case must be decided.

47 In the particular circumstances of this case, the court was considering whether there were reasonable grounds for the defendant to see a revelation of character which justified dismissal.

48 In keeping with the position of counsel for the defendant, related to the scope of evidence to be considered when determining what is dishonesty or dishonest conduct, I consider it useful to refer briefly to the history of this action before trial.

49 On December 2, 1994, the defendant applied under Rule 18A to dismiss the plaintiff's claim. At that time, counsel for the defendant submitted there was just cause for the termination of the plaintiff's employment based upon the lie or lies by the plaintiff to his superior, Barry Ringham, at a meeting on August 14, 1992 because a lie is a breach of the condition of faithful service and "dishonesty is always cause for dismissal".

50 In oral reasons for judgment, Sigurdson J., after citing the passage from ***Jewitt,*** *supra*, said:

I have concluded after much reflection that this case is not appropriate for determination under Rule 18A because I have concluded that I am unable to find on the evidence before me all of the facts that are necessary to decide this application under Rule 18A.

51 His Lordship went on to comment that:

... cross examination and the ability to assess the demeanor of the key witnesses would be necessary.

52 The defendant, maintaining its position at law that the admissions in the form of lies on the part of the plaintiff were in themselves sufficient to support its application for a summary judgment under Rule 18A, applied for

leave to appeal to the British Columbia Court of Appeal. The application for leave to appeal was heard by Mr. Justice Legg on February 17, 1995. Mr. Justice Legg delivered written reasons for judgment dated February 24, 1995 in which he stated the following:

The summary trial judge's reasons show that he was concerned over specific facts which he could not ascertain on the material before him and that it was necessary to review the credibility of the key witnesses. Further, because of the timing of the defendant's application under Rule 18A, the trial judge did not have the opportunity which was available to the trial judge in ***Inspiration Management*** to hear cross-examination of the key witnesses on their affidavits.

...

In my opinion, the circumstances to which I have referred indicate that the appellant's argument that the summary trial judge erred, does not have sufficient merit to warrant the exercise of my discretion to grant leave to appeal.

53 In my view, the decisions of Sigurdson J. and Legg J.A. lend some support to the submission of counsel for the plaintiff that the issue requiring determination is not as narrow in scope as submitted by counsel for the defendant. In this regard, what is "dishonesty" or "dishonest conduct" or, alternatively, "a revelation of character to justify dismissal", are descriptive terms. I refer to the judgment of Southin J.A. in ***Durand*** v. ***Quaker Oats*** (1990), 32 CCEL 63:

The learned judge below called what the respondent did deceptive, dishonest, and bordering on insubordinate. Those terms are descriptive. They do not come, in my opinion, to grips with the issue.

54 I find the applicable law does not require me to consider the plaintiff's conduct in isolation at a given point in time but rather to consider whether the plaintiff's actions, taken in their entirety and in context, constitute a fundamental breach of the contract of employment.

55 Here it is common ground the plaintiff lied but he did not maintain that lie. If such had been his course of conduct, it is conceded by counsel for the plaintiff this action must fail. That was not his course of action. I have accepted his evidence that shortly after the meeting in question he

attempted to find Mr. Ringham at the Claims Centre to tell him the truth and, when he could not do so, his intention remained to communicate with him at the earliest reasonable opportunity to deliver a letter telling the truth and with the expectation of further conversation with him taking place. There was no reliance to its detriment by the defendant upon the falsehoods before they were fully corrected.

56 It is trite to say the authorities to which I was referred are dependent upon their particular facts and circumstances. In ***McPhillips***, *supra,* for example, the plaintiff was charged with theft from his employer.

57 I make no attempt to explain or rationalize the conduct of the plaintiff. In my view, the attempt at anonymity related to the letter to the then President of I.C.B.C., Robyn Allan, was ill-advised if not foolish on his part. I accept the plaintiff's evidence that he had an honest belief he did nothing wrong in accessing the main computer. Mr. Fleming's evidence is supportive of this position. In this regard, I am not satisfied this conduct on the part of the plaintiff constituted a serious breach of the code of ethics of the defendant, either as alleged or at all.

58 More importantly, an employee lying to a supervisor is always serious and may, depending upon the subsequent conduct of the employee, constitute dishonesty or dishonest conduct warranting termination of the contract of employment or some form of punishment short of termination.

59 In keeping with the particular circumstances here and the findings of fact which I have made, I consider the conduct of the plaintiff on August 14, 1992, while initially having the appearance of dishonesty, when more properly considered, is better characterized as a serious mistake in judgment, which mistake he immediately realized was the wrong thing to have done and which he tried to correct by telling the truth at the first available opportunity. Insofar as the character of the plaintiff can be gleaned from his conduct, in my view it cannot be said the evidence here reveals any want of character.

60 For these reasons, I am not satisfied the plaintiff's actions taken in the proper context constitute dishonesty or dishonest conduct such as to constitute a fundamental breach of his contract of employment with the defendant.

61 I answer the first question for determination by finding that the defendant did not have just cause to terminate the employment of the plaintiff.

DAMAGES

1. What are the Damages to Which the Plaintiff is Entitled?

62 Counsel for the plaintiff submits the circumstances here make it an exceptional case and that consideration should be given to a notice period to age 60, taking the plaintiff to what was his planned retirement age, there being an implied term of his employment with the defendant extending to that time, subject to a deduction for the contingency of mitigation. Alternatively, he submits a much more extensive notice period should be determined as applicable, such as the 33 months awarded by Hood J. in ***Dedildal* v. *Tod Mountain Development Ltd.*** (May 4, 1995) Kamloops 999 (B.C.S.C.). Finally, he submits there should be an award for aggravated damages.

63 Counsel for the defendant submits the appropriate notice period is 16-18 months to be reduced by two month's salary the plaintiff received, in error, after his termination.

64 He submits there is no evidence to support a submission there was an implied term of the contract of employment that the plaintiff would have employment with the Corporation to age 60. He submits as well there is no support for either a much more extended notice period or aggravated damages in keeping with the approach taken by Hood J. in ***Dedildal*** *supra*.

65 I do not consider it necessary to set out further the submissions of counsel.

66 Upon consideration of the particular facts here, I accept the submission that upon dismissal from his employment the plaintiff would have minimal prospects of finding similar or any employment in the monopolistic industry of automobile insurance. I do not find it necessary, as counsel for the defendant submits, to have expert evidence "as to the ability of the plaintiff to find comparable employment". In my view, there is not by reason of the monopoly of this industry enjoyed by the defendant in this province any realistic prospect of such

employment being available, particularly with private insurance adjusters. Furthermore, as Hood J. commented in ***Dedildal*** *supra*, where a groundless accusation of dishonesty is made it is not a "clean firing."

67 In this perspective, of the factors to be considered, I find particular emphasis must be placed upon "the availability of similar employment" (see ***Ansari v. British Columbia Hydro & Power Authority***, (1986) 2 B.C.L.R. (2d) 33, affm'd. (1986) 55 B.C.L.R. (2d)).

68 I reject the submission of counsel for the plaintiff. There should be an implied term to the contract of employment that the plaintiff would have employment with the defendant to age 60. While such may have been the mutual expectation of the parties it would have been the right of the defendant at all times to terminate an employee such as the plaintiff for cause or upon the payment of reasonable notice.

69 I reject as well the submission of counsel for the plaintiff there should be a more extensive notice period such as the 33 months awarded by Hood J. in ***Dedildal*** *supra*, or a combination of a more conventional notice period within an award of aggravated damages. I find ***Dedildal*** *supra* to be distinguishable on its facts from this case. In ***Dedildal*** Hood J. found the allegations in the pleadings to be "spurious, vexatious and malicious" noting that the counterclaim of the plaintiff was abandoned on the morning of trial. The action proceeded on the basis of the alleged dishonesty of the plaintiff with an unfounded allegation that he had misappropriated $750,000. There were also allegations at trial of the alleged incompetency of the plaintiff.

70 For these reasons I conclude what is reasonable notice here, emphasizing the availability of similar employment factor in ***Ansari***, is 24 months, the rough upper limit for such notice.

71 I was informed the calculation of pension loss is to be left for determination by counsel.

72 The plaintiff has entitlement to costs. Counsel for the plaintiff may wish to address this question by way of a formal submission. With the advent of long vacation counsel may wish to address this question by way of submissions in writing.

Vancouver, B.C.

July 6, 1995 "R.B. Harvey, J."