

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Vernon v. British Columbia (Liquor  
Distribution Branch)*,  
2012 BCSC 133

Date: 20120127  
Docket: S104016  
Registry: Vancouver

Between:

**Stephanie Vernon**

Plaintiff

And

**Her Majesty the Queen in right of the  
Province of British Columbia as  
represented by the BC Ministry of Housing and  
Social Development (Liquor Distribution Branch)**

Defendant

Before: The Honourable Mr. Justice Goepel

## **Reasons for Judgment**

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Place and Date of Trial:

Vancouver, B.C.  
July 25-29, August 2-5,  
August 8-12, 2011

Place and Date of Judgment:

Vancouver, B.C.  
January 27, 2012

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**INTRODUCTION**

[1] In July 1980, the plaintiff, Stephanie Vernon, aged 19, commenced employment as an auxiliary clerk at the 28th & Main liquor store in Vancouver operated by the Liquor Distribution Branch (the “LDB”). Over the next 30 years, she continued her employment with the LDB being promoted from auxiliary clerk, to regular clerk, to assistant manager, to store manager. In May 2005, she became manager of the Ironwood store in Richmond and in 2006 when Ironwood became a Signature Store after a major renovation, she was appointed a Senior Store Manager.

[2] On March 1, 2010, an employee at Ironwood (the “Complainant”), made a written complaint about Ms. Vernon. After interviewing the Complainant, Ms. Vernon, and several other employees, the LDB terminated Ms. Vernon’s employment without notice.

[3] Ms. Vernon claims that she was dismissed without cause, and is entitled to damages for the defendant’s breach of contract for failure to provide reasonable notice of dismissal. In addition, she claims aggravated and punitive damages arising from the manner of her dismissal.

[4] The LDB alleges that Ms. Vernon engaged in gross workplace misconduct including bullying, harassing and intimidating subordinates. It submits that her conduct demonstrated a complete lack of respect for her employees and her position as a Senior Store Manager. It submits it was justified in dismissing Ms. Vernon for cause.

**BACKGROUND**

**A. Overview**

[5] The action raises difficult questions of fact and law. The fundamental question is whether the LDB had cause to summarily terminate Ms. Vernon without notice.

[6] To decide this question, it is necessary to make findings concerning Ms. Vernon, the Complainant, several Ironwood employees and LDB management.

This requires a detailed review of the LDB employment structure, Ms. Vernon's work history, her management techniques, the evidence of employees she supervised, the allegations of the Complainant, the LDB investigation into the complaint and manner in which it terminated her employment. Credibility is a major issue.

**B. The LDB**

[7] The LDB operates liquor stores of all sizes throughout British Columbia. Their flagship stores are branded as Signature Stores. Signature Stores sell and contain more products than other stores. Their annual sales volume is in excess of \$7.5 million.

[8] Most LDB employees are members of the B.C. Government and Service Employees' Union (the "Union"). Their terms of employment are governed by the terms of a collective agreement entered into between the Union and the Government of British Columbia (the "Collective Agreement"). The Collective Agreement recognizes the Union's right to select stewards to represent the employees and assist them in making complaints.

[9] Clause 32.15 of the Collective Agreement sets out a detailed process pursuant to which LDB employees can complain of misuse of managerial/supervisory authority. The Collective Agreement describes the misuse of managerial/supervisory authority as follows:

Misuse of managerial/supervisory authority takes place when a person who supervises or is in a position of authority exercises that authority in a manner which serves no legitimate work purpose and which ought reasonably be known to be inappropriate.

Misuse of managerial/supervisory authority does not include action occasioned through the exercise, in good faith, of the Employer's managerial/supervisory rights and responsibilities. Nor does it include a single incident of a minor nature where the harm, by any objective standard is minimal.

[10] Most LDB store managers are members of the Union and covered by the Collective Agreement. Managers of Signature Stores are considered senior employees and are excluded from the Union. Senior employees are not protected by

the terms of the Collective Agreement. Senior employees can only be terminated by the LDB's General Manager.

[11] The LDB has a labour relations department. Labour relations advisors assist and guide store managers with labour relation issues that arise at their worksite.

[12] In determining disciplinary action, the LDB follows what was described in testimony as "the principles of William Scott". Pursuant to those principles the LDB in making a disciplinary decision factors in the employee's length of service, the nature of the misconduct, previous behavior that may have been the subject of discipline and the employee's response during the investigative process. In most cases the LDB engages in progressive discipline and will provide warnings to an employee before they are terminated. There are instances, however, when the conduct is considered so egregious, that employees are summarily terminated without any prior warning. For example, in cases of theft or physical violence, the LDB has a zero tolerance policy and will terminate an employee without any warning.

**C. Ms. Vernon**

***i. Employment History***

[13] Ms. Vernon graduated from high school in 1979. After high school, she worked for three months at a grocery store. In July 1980, she started her career at the LDB.

[14] Ms. Vernon began as an auxiliary clerk. As an auxiliary, she worked at various stores throughout Vancouver. She testified that when she first started working at the LDB, it was a male-dominated environment. She described the atmosphere as gruff, with a strong military influence. Profanity was common in the workplace.

[15] In 1989, Ms. Vernon became a regular clerk at the 28th & Main store. As a regular, her responsibilities included running a cash register and stocking shelves. While a regular at 28th & Main, she also assisted with various managerial duties

including running the area recall program which scheduled auxiliary employees to the different LDB stores.

[16] Ms. Rothwell, who is currently a Senior Store Manager for the LDB, testified that Ms. Vernon was working as a regular at 28th & Main when Ms. Rothwell was transferred there as an Assistant Manager. She testified that when she came to the store, she found that Ms. Vernon was performing many managerial functions, even though she was still a clerk.

[17] Ms. Rothwell testified that Ms. Vernon appeared to respect everyone, but had a no-nonsense style. She was known as “The Little General”. Ms. Rothwell encouraged Ms. Vernon to apply for a management position.

[18] In June 1998, Ms. Vernon won the position of Assistant Manager II (“AM II”) at the Kingsgate Mall store. She continued to run the area recall program from Kingsgate. As an AM II, Ms. Vernon supervised approximately six employees.

[19] In September 1998, Ms. Vernon won the position of Assistant Manager III (“AM III”) at the 39th & Cambie store. The 39th & Cambie store was one of the LDB flagship stores. At the Cambie store, she continued to operate the recall program and oversaw approximately 20 employees.

[20] From November 1999 to January 3, 2000, she managed a boutique Christmas store that operated in the Oakridge Mall. Next she relieved as a Grid 18 Store Manager at 28th & Main. When the 28th & Main Store Manager position was posted, she passed a written test and interview process and in April 2001 she was appointed the Grid 18 Store Manager at 28th & Main.

[21] As the Store Manager, Ms. Vernon oversaw the whole working function of the store. Her responsibilities included providing leadership and direction to staff, controlling costs through effective human resource planning and inventory control, and maximizing revenues through effective merchandising and customer relations. Her primary responsibilities included managing and training employees, which included assigning and delegating tasks and monitoring performance, following

corporate direction and incorporating and maintaining best business practices. As a Store Manager, she was responsible for hiring and dealing with labour relations issues for the work unit.

[22] In May 2005, she was transferred to Ironwood as Store Manager. Over the next 15 months, Ironwood underwent extensive renovations and in September 2006, it was rebranded as a Signature Store.

[23] When Ironwood was converted to a Signature Store, Ms. Vernon was appointed Senior Store Manager. The responsibilities of a Senior Store Manager are essentially the same as a Store Manager, albeit a Senior Store Manager is managing a much larger operation. Store Managers are members of the Union while Senior Store Managers are excluded from the Union. Accordingly, when Ms. Vernon became Senior Store Manager in May 2006, she ceased being a member of the Union and could no longer look to the Union to assist her if anyone complained about her.

[24] Ms. Vernon continued as Senior Store Manager at Ironwood until her termination. In addition, she served as the Area Relief Manager on several occasions between March 2007 and September 2009. In that position, she supervised all the stores in her area.

[25] Ms. Vernon was the subject of annual performance reviews. Her last two employment reviews were dated March 31, 2008 and March 31, 2009. The reviews were prepared by her Area Manager, Gerry Lidin.

[26] In the March 31, 2008 review, Mr. Lidin commented:

Steph leads the area in store presentation, Signature service and results. Her store has the best results of Signature stores of similar volume. Team building and organization is also top in area. A great mentor for her management team.

[27] The review noted that she had exceeded her sales target by approximately \$852,000 and her implementation of marketing programs was one of the best in the province. It was noted that she was pro-active in developing her team and she keeps

interest level high and holds all staff accountable to get things done. Her focus was to get results on sale, service and implementation of programs. She was complimented for creating a teamwork concept, not only in her store, but throughout the Richmond area. Her overall rating was considered outstanding.

[28] The March 31, 2009 review was similarly complimentary. Under the heading “Teamwork and Cooperation”, it was noted that her store was best in the area and that her staff really enjoyed coming to work at the store. The review noted that Ms. Vernon was closely managing attendance and sick leave had improved. It was noted that the store’s improved attendance showed that Ms. Vernon was effective in holding people accountable and making her staff feel enthused about coming to work. The store was recognized as a model for service, presentation and social responsibility initiative. It noted that Ms. Vernon took pride in developing staff career promotions. With regard to the overall performance review, Mr. Lidin noted that Ms. Vernon “takes pride in her store, staff, results and truly leads people to be the best they can be.”

[29] Ms. Vernon testified that her performance reviews led her to believe that in regard to the key work goals of making sales targets and in-store marketing she was doing well. She also believed that her staff was happy coming to work and she was doing a good job with regard to managing attendance.

[30] In 2009, Ms. Vernon was asked to participate in an LDB recruitment campaign. Ms. Vernon was a model in the campaign pamphlet and starred in a recruitment video. After the recruitment campaign, the LDB printed a poster of Ms. Vernon taken from the campaign material. Many of the Ironwood staff signed the poster in a complimentary fashion.

[31] The Grapevine is an internal magazine published by the LDB and circulated to all stores. In the spring of 2007, The Grapevine published an article which described a series of comments from new Ironwood employees, relating to their positive experiences arriving at the Ironwood store.

[32] In October 2009, Ms. Vernon was asked to speak on behalf of all long service government employees at a banquet in their honour held at Government House.

***ii. Management Style***

[33] Ms. Vernon described herself as a no-nonsense manager. She did not let employees get away with anything at work and would tell them if they were slacking. She described herself as firm, but fair. She said she was well organized and that she saw store presentation as most important. She said she made an effort to enforce LDB policies and procedures.

[34] Ms. Vernon was known throughout the LDB as “The Little General”. She was first given that nickname while working at the 28<sup>th</sup> & Main Store. In the summer of 2009, The Grapevine published an article about Ms. Vernon entitled “The Little General”. Evidence indicated that the nickname arose because of her no-nonsense style and her insistence that her employees not slack off.

[35] The nickname was widely known throughout the LDB system. Carol Johnson, who worked with Ms. Vernon at Ironwood, was aware of the nickname before Ms. Vernon came to Ironwood. Ms. Vernon had a loud voice. Her employees had no difficulty understanding her commands.

[36] Ms. Vernon testified that she attempted to foster teamwork. She said she treated her employees as family. She often entertained her employees in her home.

[37] To foster teamwork, Ms. Vernon established the “Players Choice Awards” that were given annually to staff members at a party Ms. Vernon hosted. The awards recognized employees for Best Customer Service, Best Team Player, Most Improved Player and Most Valuable Player. Award winners were voted on by store employees.

[38] The Most Valuable Player was described as the employee who demonstrated the highest level of commitment to the success of the team. The award was to go to the employee who best demonstrated initiative, commitment and encouragement to

all team players, maintained a positive attitude and had the respect of the team. In 2007, the staff voted Ms. Vernon the Most Valuable Player.

**D. Ironwood Employees**

***i. Plaintiff's Witnesses***

[39] Ms. Vernon called six Ironwood employees as part of her case. Three of these witnesses are presently employed by the LDB in management positions. Two of them have been employed by the LDB in excess of 25 years. Two of the witnesses worked as auxiliaries at Ironwood. One worked in the warehouse. Their evidence was universally complimentary of Ms. Vernon and her management style.

[40] Wendy Whynot has worked for the LDB for 25 years. She is presently a supervisor. She admired Ms. Vernon's management style. She described her as being ruthlessly organized, very considerate and wanting her staff to excel. She said she was a true mentor who helped people move forward. She said Ms. Vernon cared for her staff and it was a pleasure working for her. Ms. Whynot said that in her 25 years of employment with the LDB, Ms. Vernon was the best manager she ever had.

[41] Ms. Whynot testified that Ms. Vernon did often swear. She said most everyone at the Ironwood store swore from time to time. She said Ms. Vernon never swore when customers were present.

[42] Ms. Whynot was interviewed in the course of the LDB investigation. She said the questions were asked without reason or context. She said when she supported Ms. Vernon in the interviews, she was made to feel as if she was wrong and lying.

[43] Jake Jacobson worked at the LDB for 33 years. He was employed at Ironwood from 2006 to 2009. He initially was assigned to Ironwood on a temporary assignment to fix rollers. He then requested to stay on as he liked Ms. Vernon's management style and the store environment. He acknowledged she had a loud management style, but said that it did not appear to bother anyone. He commented that 85 to 90% of the staff swore, but the swearing was neither mean nor vicious.

There was no swearing in front of customers. He described Ms. Vernon as one of the best managers he had ever had.

[44] Wendy Rondeau has worked at the LDB for 11 years. She came to Ironwood as a Clerk in 2006. At the time of Ms. Vernon's termination, she was an Assistant Manager.

[45] Ms. Rondeau said she never would have become an Assistant Manager without Ms. Vernon's encouragement and assistance. She taught her the best customer service procedures and how to be fair with staff. She also helped her obtain counselling when she had difficulties in her private life. She described Ms. Vernon as tough, but fair, and she was grateful for the time that she worked with her. She said that when Ms. Vernon was dismissed the majority of the staff was crying and upset. She said that Ms. Vernon was the best manager she has ever had.

[46] Ms. Rondeau said nobody ever complained to her about Ms. Vernon. She said swearing in the warehouse or lunchroom was common. Although she considered Ms. Vernon a friend, Ms. Vernon insisted that Ms. Rondeau follow the rules when she sought an exemption in regard to the manner in which uniforms were worn.

[47] Ms. Rondeau was interviewed during the investigation. When she denied certain allegations that were made against Ms. Vernon, she said the interviewers made her feel as if she was lying. They yelled at her when she denied she ever heard Ms. Vernon say "They think with their penises".

[48] Karen Chan worked at Ironwood as an auxiliary. She requested to work at the store because she liked Ms. Vernon's management style. She described her as a fantastic manager, who accommodated her employees' personal needs. Ms. Chan testified that Ms. Vernon mentored her and gave her responsibility and guidance. She said that Ms. Vernon treated the auxiliaries with respect and compassion.

[49] Ms. Chan said Ms. Vernon was always loud. Although Ms. Vernon never yelled at her, she corrected her for not wearing the proper uniform. Ms. Chan

testified that swearing was commonplace at the Ironwood store, but there was no swearing on the sales floor, a matter that Ms. Vernon had made clear to her.

[50] Ms. Chan described Ms. Vernon as an awesome manager whom most everyone appreciated. She said that she ran a tight ship. Ms. Chan considered Ironwood the best place in Richmond to work. She agreed that after Ms. Vernon was terminated, the store was divided and a few of the staff appeared happy to see her go. Ms. Chan was not interviewed during the investigation.

[51] Ivan Ty also worked as an auxiliary at Ironwood. He started at Ironwood in February 2008. He described Ms. Vernon as being strict. She rewarded those who worked hard. When Mr. Ty told Ms. Vernon that he wanted to become a supervisor, she mentored him and advised him. When Mr. Ty was on parental leave, Ms. Vernon took steps to keep a job competition open so that Mr. Ty would have the opportunity to compete for the job. She scheduled shifts to accommodate Mr. Ty's second job.

[52] Ms. Johnson has been with the LDB for 33 years. She is presently a Senior Store Manager. She worked with Ms. Vernon at Ironwood from 2004 to 2008, initially as a clerk and then as an assistant manager.

[53] Ms. Johnson described Ms. Vernon as an amazing manager. She said she treated staff as family. Ms. Johnson expressed the wish that she could be as good a manager as Ms. Vernon.

[54] Ms. Johnson said no one at Ironwood ever complained to her about Ms. Vernon. She said that Ms. Vernon was a mentor for anyone who wanted to advance.

[55] Ms. Johnson said Ms. Vernon was very direct in giving instructions. She said Ms. Vernon was critical when someone made mistakes. Sometimes she would shout instructions across the floor. She never heard Ms. Vernon use profanities in the customer area of the store. On occasion, Ms. Vernon might call a staff member "an

idiot” but she also called herself “an idiot”. Ms. Johnson could not understand how anyone could be offended by Ms. Vernon.

[56] Tim Talmey commenced work at the LDB in 1975. He worked his way up through the system. From 1995 to 2007 he served as Relief Area Manager. He retired from the LDB in October 2008.

[57] Mr. Talmey met Ms. Vernon in 2005 when she was transferred to Ironwood. He was her Relief Area Manager from 2005 until January 2007. Sometime after January 2007, when he was no longer her Area Manager, Ms. Vernon and Mr. Talmey commenced a personal relationship. They presently live together.

[58] While he was Area Manager, Mr. Talmey’s observations were that Ms. Vernon was a very good manager. She was extremely well organized, the staff remained on task, the store was always neat and the employees appeared happy. Ms. Vernon was accommodating and treated the auxiliaries in the same manner as regular employees. Mr. Talmey suggested that some LDB managers do not. He said he never received any employee complaints about Ms. Vernon.

***ii. LDB Witnesses***

[59] In addition to the Complainant, whose evidence I will detail below, the LDB called six witnesses who had worked for Ms. Vernon at Ironwood. Their evidence was far from complimentary and in certain instances directly contradicted evidence led on behalf of Ms. Vernon. Later in these reasons, I will attempt to resolve some of the credibility issues that arise from this testimony.

[60] Melanie Wylie commenced working at Ironwood in May 2006 as an auxillary. She became a regular employee in July 2007. She said she heard Ms. Vernon call several employees “f\*\*\*\*\*g idiots”. She called panhandlers outside the store “f\*\*\*\*\*g guys”.

[61] Ms. Wylie testified that in July 2008, while she was assigned light duties because of a back problem, Ms. Vernon ordered her to unload a skid of alcohol. This

work is known as doing a liquor load and is not considered light duties. When Ms. Wylie objected she said that Ms. Vernon told her “If you can f\*\*k your husband, you can do a liquor load” (the “Liquor Load Incident”). Ms. Vernon denies the Liquor Load Incident ever happened.

[62] Ms. Wylie acknowledged that she never told Ms. Vernon that she found her language offensive. She never complained to anyone about Ms. Vernon. She acknowledged that Ms. Vernon had been supportive when she had a Workers’ Compensation claim. She acknowledged attending staff parties at Ms. Vernon’s house but denied Ms. Vernon had got her flowers when she became a regular employee or that she had ever socialized with Ms. Vernon outside of work.

[63] In cross-examination, Ms. Wylie testified that she never said “f\*\*k” in the workplace or wrote the word “f\*\*k”. She says when she first commenced work at Ironwood she admired Ms. Vernon but by November 2009 she no longer did so.

[64] In November 2009, Ms. Wylie wrote on Ms. Vernon’s poster the following three comments:

- a) You know I look up to you. You are the f\*\*\*\*\*g best!!! I think you are someone that we all aspire to be. XOXO Mel;
- b) Everyone absolutely admires you XOXO; and
- c) Welcome aboard! I expect the best. I deserve the best. XOXO Mel.

[65] Ms. Wylie was interviewed in the investigation. She denied telling the interviewer that the Liquor Load Incident had happened approximately four years before (which would put it in 2006 and at a time she was not on light duties.). In the interview, she said that Ms. Vernon ran a tight ship and was very strict. She said Ms. Vernon swore in the lunchroom, warehouse and kitchen. She said that Ms. Vernon did not swear in the customer service area. She said Ms. Vernon treated everyone the same.

[66] Ms. Wylie did not recall telling Ms. Chan following the interviews that she was uncomfortable with the interview process and that the LDB had something on her. Ms. Chan testified that Ms. Wylie had told her so.

[67] In re-examination, Ms. Wylie said she never complained about Ms. Vernon because she believed Ms. Vernon was well protected in the LDB hierarchy. She said she wrote the comments on the poster at a staff party, but the comments did not accurately reflect her feelings.

[68] Betty Mejias has worked for the LDB for 12 years. She worked at Ironwood for four and one-half years. She started as an auxiliary and ultimately became a regular. She said one day at work, Ms. Vernon said “Are you a f\*\*\*\*\*g idiot?” She said she never complained about Ms. Vernon because she believed Ms. Vernon had friends in the LDB management.

[69] Ms. Mejias left Ironwood in 2007. She acknowledged that Ms. Vernon bought flowers for her and Ms. Wylie when they became regular employees. She said Ms. Vernon helped her advance her career and called her when she was on maternity leave about a job posting.

[70] In November 2010, Ms. Mejias swore an affidavit in which she said the following:

I was working in the Ironwood Liquor Store when I observed Melanie Wylie run out of Ms. Vernon’s office and into the warehouse. Ms. Wylie was red faced and in tears. Immediately afterwards, I asked Ms. Wylie why she was crying and upset. Ms. Wylie responded by saying that Ms. Vernon had just told her “If you can f\*\*k your husband, you can work the liquor load”.

[71] At trial, Ms. Mejias admitted that her sworn statement was not true and the incident she described in her affidavit did not happen. She did testify that Ms. Wylie had telephoned her after the Liquor Load Incident and advised her of it.

[72] Maricel Canizares worked at Ironwood from August 2008 to January 2010 as an assistant manager under Ms. Vernon. She said the relationship was extremely difficult. She said Ms. Vernon would regularly humiliate and degrade her. She said she lost her self-respect and self-confidence and Ms. Vernon made her feel like an idiot. She said as a result of treatment she received from Ms. Vernon, she subsequently received psychological counselling. She considered Ms. Vernon to be

ill-mannered and uncouth. She did not believe that Ms. Vernon went out of her way to hurt her feelings; it was just the way she was.

[73] Ms. Canizares said Ms. Vernon described herself as the Queen and Ms. Canizares as the princess and that the staff were court jesters. This apparently was said in the context of Ms. Canizares being too friendly with the staff.

[74] Ironwood was Ms. Canizares' first employment at the LDB. She acknowledged that Ironwood was a fun place to work and that she and her staff members would joke around. She testified she never told Ms. Vernon that she found her language or behaviour offensive. She said she did not do so because she was afraid of Ms. Vernon and wanted to avoid her as much as possible.

[75] Ms. Canizares acknowledged that Ms. Vernon rearranged her shifts to accommodate her need to attend doctor's appointments. Ms. Canizares acknowledged that she sometimes has problems with English, which is her second language. Occasionally, she interprets comments negatively because she does not understand the context.

[76] In January 2010, Ms. Canizares was successful in winning a competition to become a manager. She wrote Ms. Vernon and thanked her for all the help she had given to her. Shortly after Ms. Canizares started as a manager at the 28th & Main Branch, Ms. Vernon telephoned her and gave her helpful advice on how to deal with a problem employee. Ms. Vernon also gave her the name of a labour relations advisor that she could call to assist her.

[77] Kathryn van Pelt has worked for the LDB for 25 years. She was Acting Manager of the Ironwood Store when Ms. Vernon was appointed its Manager. She then worked as Ms. Vernon's assistant. Her last day at Ironwood was February 19, 2006.

[78] Ms. van Pelt told of an incident in which Mr. Talmey and Mr. Lidin had come to the Ironwood Store and brought Ms. van Pelt a muffin. She said Ms. Vernon became angry about the muffin. They had a conversation in which Ms. Vernon said

to Ms. van Pelt that Gerry liked her and after Ms. van Pelt agreed, Ms. Vernon said “I like you too, but, if I didn’t, your ass would be out of here so fast”. Ms. van Pelt took that as a threat.

[79] Ms. van Pelt acknowledged that she never complained about Ms. Vernon. She says she believed Ms. Vernon was well connected and there would be no value in a complaint. She agreed that when she left Ironwood in February 2006, Ms. Vernon cooked a dish for her.

[80] Ms. van Pelt denied that she had a grudge against Ms. Vernon. She agrees that when Ms. Vernon started at Ironwood she felt bad when she heard Ms. Vernon comment that “I was sent here to clean this up”. Ms. van Pelt took that as a slight on her own work.

[81] Ms. van Pelt said she was pleased when Ms. Vernon was fired. Although it had been four years since she had worked with Ms. Vernon, Ms. van Pelt felt her firing was deserved. When she learned Ms. Vernon had been suspended, she spoke to Mr. Branham, the Director of Store Operations, and advised him that she had information concerning Ms. Vernon. Ms. van Pelt was subsequently interviewed during the investigation.

[82] Donita Catamo-Meyer worked at Ironwood from June 30 to September 4, 2009. She was a cashier and clerk. In her opinion, Ms. Vernon treated staff badly, would be insulting and scream and swear at them. She could not, however, recall specifics.

[83] Shortly after Ms. Catamo-Meyer commenced work at Ironwood, her daughter was in an accident and was hospitalized. She said when she called in the next day and could not go to work, Ms. Vernon grilled her about the accident and asked her questions as to what had happened. She said Ms. Vernon continued to call her on several occasions thereafter when she remained off work. Ms. Catamo-Meyer said that this added to her stress.

[84] Ms. Catamo-Meyer testified that in 2002, while she was working at Ironwood, she had been robbed. As a result of that incident, she developed post-traumatic stress disorder. Because of that incident, when she was transferred to Ironwood in June 2009, she did not want to go. She filed a grievance concerning her transfer. She mistakenly believed that Ms. Vernon had arranged her transfer to Ironwood.

[85] Ms. Catamo-Meyer agreed that at the time of her daughter's accident, Ms. Vernon told her that she could take a family illness day and could also use vacation days if she needed to stay off work longer. Although she said Ms. Vernon questioned her concerning her daughter's accident, she could not remember the exact words that had been used.

[86] In August 2009, at a time when Ms. Vernon was working as the Area Relief Manager, Ms. Catamo-Meyer had an argument with Ms. Rondeau. Thereafter she was no longer willing to work at Ironwood. Ms. Vernon then arranged for her to be transferred to Marpole.

[87] Ms. Catamo-Meyer initially refused to report to Marpole. She said she was ill and depressed. She subsequently met with Ms. Vernon and Daphne van der Boom, a LDB Labour Relations Advisor. She was suspended for three days without pay.

[88] In October 2009, Ms. Catamo-Meyer resigned from the LDB and took a job working with handicapped children. She said she quit as a result of her experience at Ironwood and Marpole. She thought her transfer to Marpole was a punishment.

[89] Ms. Catamo-Meyer was interviewed in the course of the investigation. In the interview, she said Ms. Vernon used profanity in the lunchroom, office and warehouse, but not in front of customers.

[90] Shirley Kirkland has worked at Ironwood for six years. She said Ms. Vernon was a very strong manager. She acknowledged that she had lots of knowledge and ability as a manager. She said Ms. Vernon intimidated the staff. She was very loud. She would say sarcastic thing such as "do not call in sick, call in dead".

[91] Ms. Kirkland testified that Ms. Vernon often used profanity in the retail sections of the store. She said her profane remarks would be clearly audible to customers. She said this happened two to three times a week.

[92] Ms. Kirkland testified that Ms. Vernon would swear at staff members including the Complainant and Ms. Canizares. She could not remember exactly what was said.

[93] Ms. Kirkland agreed that there was a rule limiting the time an employee could spend with a wine representative. She also agreed that Ms. Vernon had been fair to her most of the time. She said she felt good when she was given the Players Choice Award for Best Team Player. She said that Ms. Vernon would compliment her on her appearance. She said that she never complained to Ms. Vernon about her language or behavior.

## **E. The Complainant**

### ***i. Overview***

[94] Ms. Vernon's termination followed an investigation of a written complaint made by an Ironwood employee. I have issued a publication ban with regard to the employee's name, and she will be referred to throughout as the Complainant. To put the complaint and the investigation that followed into perspective, it is necessary to review the Complainant's background and work history and the events that immediately preceded the filing of the complaint.

### ***ii. Background***

[95] The Complainant is a native of Iran. She came to Canada in November 2000. She commenced employment at the LDB in May 2006.

[96] The Complainant had a difficult childhood. Her father was a veteran of the Iran/Iraq war in which he suffered shell shock. He came to consider his family as the enemy. On at least one occasion he chased the Complainant with a knife.

[97] The Complainant became anxious as a child. She developed a compulsive neck twitch. She still has panic attacks and flashbacks concerning her childhood experiences. She suffers obsessive-compulsive symptoms and has had suicidal tendencies.

[98] The Complainant's sister still lives in Iran. The Complainant has for some years been attempting to assist in her sister's immigration. It is an issue that causes her considerable stress.

[99] After leaving Iran, she lived for some time in Europe. While in Europe, she was kidnapped. She was also assaulted by someone who had promised assistance in bringing her sister to Canada.

[100] The Complainant acknowledged that English is her second language. She agreed that she sometimes might not understand a word or phrase and sometimes takes comments out of context.

### ***iii. Work History***

[101] The Complainant commenced work at the LDB in May 2006. She was initially hired as an auxiliary at the Marpole store. In due course she became a regular.

[102] The Complainant wished to become a Product Consultant. Prior to transferring to Ironwood she had taken wine courses to increase her knowledge. Product Consultants are only hired at Signature Stores. She requested a transfer to Ironwood in order to further her career. She started at Ironwood in September 2009.

[103] While at Marpole, the Complainant's manager was Ms. Johnson who had previously worked for Ms. Vernon at Ironwood. Ms. Johnson testified that the Complainant at times had difficulty understanding English. On several occasions she refused to serve customers who she believed were being rude to her or not treating her with proper respect. Certain of these problems appear to have arisen because of language difficulties.

[104] In June 2009, the Complainant and another employee at the Marpole store got into a dispute. The Complainant wrote a two-page letter in which she criticized the other employee's "negative attitude and destructive behaviour". She indicated that if the employee continued to behave in a similar fashion she would take the case to Head Office.

[105] The Complainant commenced work at Ironwood in September 2009. The Complainant considered Ms. Vernon to be a bully. She said she treated people as if they were not worthy. She said Ms. Vernon would intimidate her and yell at her in front of staff and customers. She said Ms. Vernon would pick on her and make fun of the way she spoke. The Complainant felt she did not deserve such treatment. She never told Ms. Vernon that she found her comments or behaviour offensive.

[106] The Complainant acknowledged that English was her second language and she sometimes took comments out of context or did not understand a word or phrase. She agreed that Ms. Vernon signed her up for various courses which would assist her in becoming a Product Consultant. She also agreed that Ms. Vernon had granted her request for time off work so she could study and take a wine course at head office.

[107] The Complainant came to believe she had to stand up for other staff at Ironwood. She wanted Ms. Vernon to stop harassing people. When she learned that Ms. Vernon was prepared to apologize she was not prepared to except an apology from Ms. Vernon because she did not trust Ms. Vernon and did not believe that any apology would be sincere.

***iv. Events of February 2010***

[108] The Complainant's last day of work was Thursday, February 11, 2010. On that day she had been assigned work on the cash register. As the store was not busy, Ms. Vernon asked her to work on a project. Ms. Vernon said something to the Complainant that the Complainant did not hear and she asked Ms. Vernon to repeat herself. Ms. Vernon then asked "Are you deaf?" and when the Complainant responded that she had not heard her, she said words to the effect that "I think you

are going deaf because every time I speak to you, you do not hear me". The Complainant said two employees, including Ms. Chan, witnessed this exchange.

[109] The Complainant considered this the last straw. After her shift finished she felt terrible. When she went home she believed she could not take this conduct anymore as it offended her dignity and integrity. She believed if she continued to go to work, Ms. Vernon would have her transferred.

[110] On the evening of February 11, the Complainant phoned the store and advised she would not be in for her shift that began at 7:00 a.m. the next morning. She gave no reason for her absence.

[111] On Friday February 12, at 12:48 p.m., Ms. Vernon left messages on the Complainant's home and cell phone. These calls and several others that Ms. Vernon made to the Complainant in the following days were recorded on the Complainant's answering machine. The audio recordings were played back at trial.

[112] In the February 12 calls Ms. Vernon asked the Complainant whether she was coming in the next day because they had nobody to replace her. She asked her to give her a call and let her know how she was feeling. She also advised her that when somebody calls in sick they are supposed to phone in on the day they are sick. Ms. Vernon asked the Complainant to contact her.

[113] At approximately 4:15 p.m. on February 12, the Complainant came to the store and dropped off a doctor's note that said she was unable to come to work. She spoke to Ms. Wylie. Ms. Wylie asked her what her problem was and she refused to discuss it, but said she would speak to Ms. Vernon directly. When Ms. Wylie asked if she could get her anything, the Complainant started to cry.

[114] Ms. Wylie told the Complainant that if she was planning on taking more than a few days off, she needed proper documents and the Complainant took with her an ST02 form which would be completed by her doctor. The medical note that the Complainant had brought in said that the Complainant could not work for "medical reasons until further notice".

[115] On Saturday February 13, at 8:08 and 8:10 a.m., Ms. Vernon left messages for the Complainant on her home and cell phone. Ms. Vernon indicated that she needed to know more about what was going on because the Complainant was registered in certain courses, and if she was going to be off for an extended period of time, those matters would have to be re-directed. She asked the Complainant to call her to give her a sense of what was going on. She indicated she hoped the Complainant's illness was not too serious and that it would not preclude her from doing the courses that she had signed up for.

[116] At 10:02 a.m. on February 13, Ms. Vernon phoned again. She advised that she was at work and looking at the work schedule. She advised the Complainant that she was scheduled to work Sunday, Monday and Tuesday and in looking at the doctor's note there appeared to be nothing that indicated she could not work. She advised the Complainant that in order to pay for medical leave, it was necessary to find out what was going on and if it was physical that perhaps they could put her on light duties.

[117] On Monday February 15, at 8:22 a.m., Ms. Vernon again phoned. She indicated that it was imperative that they speak and asked the Complainant to give her a call at the store. She advised that the Complainant's coding was Leave Without Pay.

[118] On February 15, Ms. Whynot called the Complainant to ask how she was and to direct her to call Ms. Vernon. The Complainant told Ms. Whynot that she was not prepared to call Ms. Vernon. She stated she was having anxiety attacks and it was comments from Ms. Vernon that had induced those feelings. She told her that Ms. Vernon's style of management was unacceptable to her and she could not work under those conditions.

[119] At 5:56 p.m. on February 15, Ms. Vernon left another message with the Complainant. At that time, she was aware that the Complainant had spoken to Ms. Whynot. She advised the Complainant that she needed to speak to her and that it was necessary to obtain a clear understanding to deal with the situation and find

out what it was that was precluding her from working. She told her she would be at work the following day and that she had to contact her.

[120] On Tuesday, February 16, at 9:24 a.m., Ms. Vernon left a further message for the Complainant. Ms. Vernon indicated that she understood that the Complainant had been directed to call her, but she had refused. Ms. Vernon told her that in such circumstances the employer looks at that as insubordination. Ms. Vernon told her that if she had an issue with the store or with her, she wanted to discuss it and if that did not happen that day, then the next process would be that the Complainant would be directed to a meeting at Head Office with a Labour Relations Advisor to which she should bring a Shop Steward. She told the Complainant that it was in her interest to call and that she was there to help as to what was going on and again advised her that if she did not, the next step would be disciplinary action.

[121] At approximately 9:40 a.m. on February 16, the Complainant phoned the store and spoke to Ms. Vernon. Ms. Vernon was with Ms. Wylie and they spoke to the Complainant on a speaker phone. Ms. Wylie made notes of the conversation.

[122] Ms. Vernon asked the Complainant if the reason she was off work was anything to do with any of her co-workers. The Complainant indicated no, that she loved working with everyone. Ms. Vernon then asked if there was an issue with her. The Complainant said “No, absolutely not.” She said she loved the challenges that were given to her, that she was strong and could handle quite a bit. (In her trial testimony, the Complainant said that in this telephone call she lied when she told Ms. Vernon that she had no issues with her).

[123] Ms. Vernon then went on to advise the Complainant that she was there to guide and help her and that she wanted her to succeed. Ms. Vernon asked whether there were any problems with her sister or family and the Complainant said there was not. The Complainant indicated that she was presently outside her doctor’s office and had the ST02 form and would drop it off later that day. Ms. Vernon told the Complainant about the Employee and Family Assistance Program that offers assistance to employees and that it might be of assistance to her.

[124] On Wednesday, February 17, at 10:38 a.m. and 12:16 p.m., Ms. Vernon again phoned the Complainant. She advised her that she had spoken to the Area Manager for Labour Relations and was directing her to attend a meeting the following day at her office at Ironwood. She advised her to have a Shop Steward present or, alternatively, she could ask a co-worker to sit in with her.

[125] At approximately 2:52 p.m. on February 17, the Complainant called Ms. Rondeau. She advised her that she would not be attending the meeting the following day. She told her she was still sick and had been advised by her Shop Steward not to attend the meeting because of her illness. She said that the Shop Steward and staff representative who were handling the case would discuss this matter with Ms. Vernon and the Shop Steward would call Ms. Vernon on February 23 since she was not available until then. She advised that if Ms. Vernon called her again, she would not speak to her until Ms. Vernon had spoken to the Shop Steward.

[126] Ms. Vernon sought advice from George Reynolds, her Area Manager concerning the Complainant's absence. She called Mr. Reynolds and told him that she had an employee who was refusing to return her phone calls. Mr. Reynolds told her she should direct the Complainant to a meeting at Head Office. Before doing so, however, he advised her that she should speak to Ms. van der Boom.

[127] On February 12 and February 15, the Complainant had left telephone messages for Ms. van der Boom. The messages indicated that she was being harassed at the work place in some fashion. Ms. van der Boom did not transcribe the messages.

[128] Some days after Ms. Van der Boom had received those messages, Ms. Vernon telephoned her to seek her advice as to how to deal with the Complainant. Ms. van der Boom and Ms. Vernon had a lengthy telephone call which Ms. van der Boom estimated to be between 45 minutes and an hour. During the call, Ms. Vernon advised that the Complainant was off sick, but was not returning phone calls and was refusing to speak to her.

[129] Ms. van der Boom advised Ms. Vernon that the Complainant's failure to return phone calls and refusal to come to a meeting could be considered insubordinate. She advised Ms. Vernon that she should direct the Complainant to a meeting at Head Office.

[130] In the conversation, Ms. Vernon apparently spoke very poorly about the Complainant and her failure to provide a proper doctor's certificate. She indicated that she had been assisting her with her private consultant courses.

Ms. van der Boom testified that she was somewhat taken aback during the conversation because expletives were ripping out of Ms. Vernon's mouth and she was dropping the "F- bomb" consistently and regularly. In the course of the conversation, Ms. van der Boom asked Ms. Vernon whether she used such language when speaking with her staff and Ms. Vernon said no, that she is always professional and respectful.

[131] Ms. van der Boom testified that she was not troubled about the language because in her experience when she receives calls, it is often because her clients are at their wits' end with an employee. She was somewhat concerned, however, because the agitation appeared to go on so long and she said she told Ms. Vernon that she did not want to hear that she was "speaking to her staff that way because that would be a big, big problem".

### **THE COMPLAINT**

[132] On March 1, 2010, the Complainant sent a letter to Ms. van der Boom (the March 1 Letter"). In the March 1 Letter, the Complainant indicated she was writing to express her concerns regarding the behaviour of her manager, Ms. Vernon. She advised that over the last four or five months there had been many incidents which had made her feel harassed, embarrassed, humiliated and uncomfortable at work.

[133] In the March 1 Letter, the Complainant provided eight examples of conduct which she said made her feel uncomfortable in her job. The specific complaints were:

1. Use of profane language on a daily basis that is both embarrassing and degrading. In that regard, she gave several examples including “f\*\*\*\*\*g Muslims” which she said was used directly in relation to her as the only Muslim in the store.
2. An incident in which Ms. Vernon yelled at the Complainant to “tuck in your uniform”. In the course of that incident, the Complainant had said that she did not have any problems doing so and reported that Ms. Vernon had responded “Yeah because you know if you don’t do it I’ll kill you”. The Complainant said Ms. Vernon’s tone of voice was absolutely serious and threatening and her comments made her feel threatened.
3. An incident in which she was speaking to her co-worker, Ms. Chan, which Ms. Vernon had shouted at her “Work, no talk”.
4. An incident concerning a potluck at work which Ms. Vernon had apparently ignored by taking her assistant that day to The Keg to buy her lunch. She said in reference to one of the staff member’s food that it “tastes like s\*\*t”.
5. An incident when the Complainant had been assisting a customer choose a bottle of wine. She said that when she had done so Ms. Vernon then told her she had spent seven minutes with the customer and the rule is only one minute. When the Complainant tried to explain that she had sold her five bottles of wine, Ms. Vernon allegedly told her it did not matter and if she wanted to be a Product Consultant she had to follow the one minute rule. She said that thereafter every time Ms. Vernon saw a customer approaching her she would stop and scream right away “one minute rule”.
6. An incident in which a wine representative approached the Complainant while she was working at her till. Ms. Vernon came to the

till and berated her and the wine representative because the wine representative was not to speak to employees when they were working on the till. The Complainant indicated that another wine representative who she identified as “Robert” had witnessed the entire incident.

7. A general complaint that Ms. Vernon set expectations that were impossible to meet.
8. An incident where a customer had made inquiries concerning the availability of a certain product and the Complainant checked the computer. She said she felt that she had been embarrassed and humiliated in front of the customer.

[134] In the March 1 Letter, the Complainant indicated she had considered discussing these issues with Ms. Vernon but due to her unapproachable and unprofessional attitude, she did not think it wise to do so. In the result, she was asking for Ms. van der Boom’s assistance as she did not feel she should have to work in an environment where such language and behaviour was tolerated.

## **THE INVESTIGATION**

### **A. Overview**

[135] The March 1 Letter led to an investigation and the ultimate termination of Ms. Vernon. The individuals involved in the investigation and the decision to terminate Ms. Vernon included Ms. van der Boom, Sam Sethi who was also a Labour Relations Advisor, Rita Ferrara, the Acting Director of Labour Relations, Gord Zelenika, the Director of Human Resources, Gary Branham, the Director of Store Relations, George Reynolds who was Ms. Vernon’s Area Manager, Sheila Puga, the Union staff representative and Jay Chambers, the LDB’s General Manager. Ms. van der Boom, Mr. Sethi, Ms. Ferrara, Mr. Reynolds and Mr. Branham testified at the trial. Mr. Zelenika was examined for discovery and certain answers he gave on his discovery were read in as part of the plaintiff’s case.

[136] The thoroughness and fairness of the investigation and the manner in which the LDB decided to terminate Ms. Vernon are matters of controversy in this litigation. I will first provide a brief chronological overview and then review in some detail the various events that took place during the course of the investigation up to Ms. Vernon's termination.

**B. Chronology**

[137] After receipt of the March 1 Letter, Ms. Ferrara instructed Ms. van der Boom to investigate the complaint. Ms. van der Boom and Mr. Reynolds interviewed the Complainant on March 9 and Ms. Vernon on March 25. Ms. van der Boom provided Ms. Ferrara oral reports on those interviews.

[138] Subsequent to the interviews, Ms. Van der Boom had discussions with Ms. Puga and sought the Union's input as to how the complaint should be resolved. On April 1, Ms. Puga sent Ms. Van der Boom an email setting out the Union's proposed remedy. The remedy did not include the termination of Ms. Vernon.

[139] At the end of March, Ms. van der Boom went to California to assist in a family situation. She did not return until the end of April.

[140] On Friday, April 9 at 5:51 p.m., Ms. Puga emailed Ms. Ferrara asking for an update. In the email she advised that if a resolution was not forthcoming by April 23 she would refer the matter to the Deputy Minister pursuant to the terms of the Collective Agreement.

[141] On April 12, Ms. Ferrara and Ms. Puga exchanged emails. Ms. Puga agreed to extend the time to respond to the complaint to April 30.

[142] At approximately 4:00 pm on April 12, Ms. Ferrara asked Mr. Sethi to take over the investigation. She gave him an oral briefing, a copy of the March 1 Letter, and a list of witnesses to interview. She did not give him copies of Ms. van der Boom's notes of her interviews of the Complainant and Ms. Vernon.

[143] On April 13 and 14, Mr. Sethi and Mr. Reynolds interviewed 10 LDB employees. During the course of the interviews Mr. Sethi provided oral reports to Mr. Branham. At the end of the interviews Mr. Sethi orally briefed Ms. Ferrara and Mr. Zelenika. He recommended to them that Ms. Vernon be terminated.

[144] On either April 15 or 16, Mr. Branham, Mr. Zelenika and Ms. Ferrara met. The only written information before them was the March 1 letter. They decided that Ms. Vernon must be terminated.

[145] On April 19, Mr. Branham and Ms. Ferrara met with Ms. Vernon. Mr. Talmey was present for part of the meeting. Mr. Branham told her that the investigation had confirmed that she had engaged in gross workplace misconduct and the LDB had no option but to terminate her employment. In recognition of her length of service, they gave her the opportunity to tender her resignation. There is a dispute in the evidence whether they offered to provide a reference if she resigned.

[146] Ms. Vernon refused to resign. Because she was an excluded employee, only Mr. Chambers had the authority to terminate her employment.

[147] On April 23, Mr. Branham sent by courier a letter to Ms. Vernon suspending her without pay or benefits for an indefinite period pending a recommendation to the General Manager terminating her employment. The letter advised that she would be advised in due course of the disposition of the matter.

[148] Ms. van der Boom returned at the end of April. On May 11 she interviewed Ms. Catamo-Meyer and Ms. van Pelt.

[149] On May 18, Ms. van der Boom forward to Ms. Ferrara a memo recommending Ms. Vernon's dismissal (the "Recommendation Memo".)

[150] On May 20, Mr. Zelenika forwarded the Recommendation Memo and a letter dismissing Ms. Vernon (the "Dismissal Letter") to Mr. Chambers.

[151] On May 21, Mr. Chambers approved the recommendation to terminate Ms. Vernon and signed the Dismissal Letter.

[152] On May 31, the Dismissal Letter was couriered to Ms. Vernon.

**C. Events March 1 - 9, 2010**

[153] After she received the March 1 Letter, Ms. van der Boom advised Ms. Ferrara of the complaint. Ms. Ferrara asked her to interview the Complainant.

[154] Ms. Ferrara was aware that Ms. van der Boom had received telephone messages from the Complainant prior to writing the complaint letter. She believed Ms. van der Boom also had told her about her discussions with Ms. Vernon in mid-February 2010 when Ms. Vernon was seeking advice as to how to deal with the Complainant's absence.

**D. Interview with Complainant - March 9, 2010**

[155] Following receipt of the March 1 Letter, Ms. van der Boom made arrangements to interview the Complainant. The interview took place on March 9, 2010. Present were Ms. van der Boom, Mr. Reynolds, the Complainant, and Ms. Puga.

[156] In the interview, the Complainant repeated many of the matters set out in the March 1 Letter. She also complained about Ms. Vernon's telephone call of February 13. The Complainant took Ms. Vernon's comments concerning the product courses as a threat that she would not be able to take the courses unless she immediately returned to work.

[157] The Complainant gave several examples of Ms. Vernon's use of profane language. She said she expected Ms. Vernon to be more professional as she was a manager. She indicated that other employees, both clerks and supervisors, used similar language. She said that Ms. Vernon had a beautiful store but she ran it in a disrespectful manner.

[158] The Complainant gave considerable detail concerning an incident in which she alleged that Ms. Vernon said "f\*\*\*\*\*g Muslims do whatever they want but they

don't eat ham". She said that Ms. Rondeau was present when that comment was made.

[159] In discussing Ms. Vernon's swearing, the Complainant indicated she was loud and customers could hear her.

[160] Ms. van der Boom testified that she was not surprised by the allegations of the use of expletives because in the course of her communications over the years with Ms. Vernon both of them would use expletives in their discussions. She said she was surprised to hear, however, that Ms. Vernon was yelling expletives across the store when customers were present.

[161] In the interview, the Complainant did not say that she wanted Ms. Vernon to be fired. She did want the conduct to stop and she suggested that Ms. Vernon take some training. The LDB had harassment training programs for their employees.

[162] Ms. van der Boom and Mr. Reynolds both testified that they found the Complaint to be sincere and credible. Ms. van der Boom testified she was shocked by what she heard.

**E. Events March 9 - March 20, 2010**

[163] On March 9, following the interview of the Complainant, Mr. Reynolds and Ms. van der Boom prepared a list of potential witnesses to interview (the "March 9 List"). Mr. Reynolds and Ms. van der Boom's recollection of how the March 9 List was prepared differ. Ms. van der Boom says that the list was prepared based on what the Complainant had told them and Mr. Reynolds' knowledge of who in the store might be an appropriate witness. Mr. Reynolds testified that he did not contribute any names to the witness list. He said that Ms. van der Boom decided who would be interviewed.

[164] The March 9 List included four auxiliary employees, but not Ms. Chan who had been identified by the Complainant as a witness to two of the specific incidences which had occurred. The list, in addition to store employees, also included

Ms. Canizares, Ms. Catamo-Meyers and Ms. Mejias, none of whom were at that time working at Ironwood.

[165] In her evidence, Ms. van der Boom testified that the list of persons to be interviewed included those suggested by Ms. Vernon. When it was pointed out to her that the March 9 List had been prepared prior to Ms. Vernon's interview, she said a second list was prepared based on her and Mr. Reynolds' notes from their meetings with Ms. Vernon and the Complainant. Her evidence in this regard was contradicted by Ms. Ferrara who said the interviews were based on the March 9 List.

[166] I do not accept Ms. van der Boom's evidence that a second list was prepared. Nor do I accept her evidence that Mr. Reynolds suggested names to be interviewed. I find that the March 9 List was the only interview list prepared and Ms. van der Boom prepared it.

[167] On March 9, Ms. van der Boom sent an email to Mr. Reynolds asking him to arrange interviews with 12 Ironwood employees on March 17 and 19. Ms. Ferrara subsequently ordered Ms. van der Boom to cancel those interviews and to meet first with Ms. Vernon before interviewing any employees.

[168] On March 10, Mr. Reynolds called Ms. Vernon and told her of the complaint. While she understood from Mr. Reynolds that the complaint was serious, Ms. Vernon was not told that her job might be in jeopardy.

[169] On the day she spoke to Mr. Reynolds, Ms. Vernon was leaving for holidays. She returned on March 20th. When she got home, there was a message for her to call Mr. Zelenika. He told her that she had to attend a meeting concerning the complaint. He indicated to her that the meeting was to be a chit-chat. She was not given a copy of the March 1 Letter in advance of the meeting.

[170] Ms. van der Boom testified that a few days after the interview of the Complainant, Ms. Puga contacted her to confirm that the Complainant wanted to pursue the complaint under Articles 1.9 and 32.15 of the Collective Agreement.

Article 1.9 is concerned with discrimination and sexual harassment while Article 32.15 concerns the misuse of managerial authority.

**F. Interview with Ms. Vernon - March 25, 2010**

[171] Ms. Vernon met with Ms. van der Boom and Mr. Reynolds on March 25. Ms. Vernon had limited recollection of the meeting.

[172] Ms. Vernon had no knowledge of the substance of the complaint prior to the meeting. At the meeting, she was handed the March 1 Letter. She was told that Ms. van der Boom and Mr. Reynolds had met with the Complainant and that the complaint was serious. She said Ms. van der Boom began to go through the complaint. She said that Ms. van der Boom was smirking and condescending. Ms. Vernon said she was very confused at the meeting and was not comprehending exactly what was going on. She said the meeting was an interrogation. She was told she was not being truthful. Ms. van der Boom asked her “why would the Complainant lie”. Ms. Vernon responded she did not know.

[173] In the meeting, Ms. Vernon admitted that she did swear. She pointed out to Ms. van der Boom that she also swore. She told Ms. van der Boom she could stop swearing if told to. She says, in fact, she never again swore while at the store.

[174] In regard to specific matters in the complaint, she denied that she had ever called the Complainant a “f\*\*\*\*\*g Muslim”. She admitted that she used the expression “Chinky food”.

[175] Ms. van der Boom testified that Ms. Vernon initially denied each and every allegation made by the Complainant. In the course of the meeting she said that Ms. Vernon ultimately admitted that she did swear and use the expression “Chinky food”. She said that Ms. Vernon was quite agitated. She said during the meeting, Ms. Vernon became upset and raised her voice in a manner Ms. van der Boom considered unacceptable. She said she had to speak loudly over Ms. Vernon to get her attention. Ms. van der Boom acknowledged that at the meeting Ms. Vernon kept saying that she did not understand.

[176] Ms. van der Boom's notes of the meeting do not corroborate her evidence that Ms. Vernon vehemently denied all of the allegations. She did deny that she had called the Complainant a "f\*\*\*\*\*g Muslim". The notes record that Ms. Vernon said she would not use that expression and it was a blatant lie. She said she did not even know that the Complainant was a Muslim.

[177] Ms. Vernon denied saying to the Complainant in a threatening manner that she would kill her if she did not tuck in her uniform.

[178] In regard to the potluck, she said she did not attend. On that date, she had taken Ms. Whynot out to lunch at The Keg as a reward. She denied that she had made any derogatory comments about an employee's food.

[179] Ms. Vernon said the comment about the one-minute rule was "a bunch of bunk". She acknowledged that she had a three-minute rule and it applied to everyone. She denied that she ever used the intercom to call a clerk but would stand close and let her presence be known.

[180] Ms. Vernon acknowledged the incident concerning the wine representative at the cashier's till. She said she told the Complainant and the wine representative that they were not to conduct business at the till in front of customers. She says the wine representative apologized and left. Ms. Vernon said that Ms. Chan and Ms. Rondeau both witnessed this incident.

[181] Ms. Vernon said she was unaware the Complainant had such feelings about her. She said she had made arrangements for the Complainant to take certain courses and had spoken to her from time to time about certain matters at work. She said there had been customer complaints about the Complainant.

[182] When Ms. Vernon was questioned about her numerous phone calls to the Complainant after February 11, she indicated that the store was short staffed and she needed to know the Complainant's intentions in order to staff the store.

Ms. Vernon denied that she swore at her staff. She acknowledged that she swore in the warehouse but never on the floor or in front of customers.

[183] Ms. Vernon said that she took offence to the discrimination allegations. She said she “doesn’t care about such stuff” and that she did not understand the Muslim comment. She said she understood the swearing thing and would not swear in the future. When asked if it was possible that she had made any of the comments even as a joke, she repeated she had never said “f\*\*\*\*\*g Muslims”.

[184] Ms. Vernon pointed out that if there were problems at the store, employees would raise them with Ms. Whynot who was the supervisor. Ms. Whynot, in turn, would bring them to Ms. Vernon.

[185] At the end of the meeting, Ms. van der Boom told Ms. Vernon she was not to discuss the meeting with anyone. She was told if she did she would be subject to discipline.

**G. Events March 25 - April 16, 2010**

[186] Ms. Vernon was upset by the meeting. Following the meeting, she complained to Mr. Reynolds and Mr. Zelenika about the way in which she had been treated. Mr. Zelenika told her words to the effect that “this is not how we treat our senior managers”. She told Mr. Zelenika that she was prepared to apologize for her use of profanity.

[187] When questioned on discovery Mr. Zelenika testified that the purpose of the interview was to give Ms. Vernon as opportunity to come in a casual way to discuss what was going on at Ironwood with the Complainant. It was intended to be a discussion, not an interrogation. He said he subsequently spoke to Ms. van der Boom and Mr. Reynolds in relation to the interview. He told them that he was upset with the way that the interview had been conducted. He told them he had wanted them to have a conversation with Ms. Vernon to understand what was going on with the Complainant and that he had wanted Ms. Vernon to be treated with respect and she felt she had not been.

[188] Ms. van der Boom gave Ms. Ferrara an oral report on her interview with Ms. Vernon. She told Ms. Ferrara that Ms. Vernon had been emotional, loud and disruptive. She said that Ms. Vernon had denied all of the allegations.

[189] Subsequent to the interview with Ms. Vernon, Ms. van der Boom had some discussions with Ms. Puga concerning the remedy the Complainant was seeking. On April 1, 2010, Ms. Puga sent Ms. van der Boom an email in which she advised that the Complainant and the Union were seeking the following:

1. a finding from the LDB that her complaint of harassment and misuse of managerial authority is valid and a commitment from the LDB that they support her desire to work in an environment free of harassment and discrimination;
2. an apology from Ms. Vernon to the Complainant and her co-workers at BCLS #120 regarding her inappropriate conduct;
3. in order to ensure that the Complainant will no longer be subject to ongoing harassment, for Ms. Vernon to be transferred to another store immediately; and
4. prior to starting in a new location, Ms. Vernon be directed to participate in sensitivity training involving harassment, interpersonal communication or other relevant training.

[190] On or about April 1, 2010, Ms. van der Boom travelled to California to look after a family problem. She did not return until April 29, 2010, and had no involvement in this matter while she was away.

[191] On Friday, April 9 at 5:51 p.m., Ms. Puga sent Ms. Ferrara an email concerning the complaint. She pointed out that under the Collective Agreement the employer had to respond to the complaint within 30 days and if the matter was not resolved satisfactorily at the labour relations level, the Union was entitled to file a complaint with the Deputy Minister. Ms. Puga advised that if the Union did not

receive a satisfactory resolution to the matter before April 23, they would be filing a complaint to the Deputy Minister.

[192] The Collective Agreement sets out the process that must be followed when a complaint is referred to the Deputy Minister. The process includes a written complaint and can culminate in an evidentiary hearing before a panel chosen by the employer and Union. While Ms. Vernon was not a member of the Union, if the complaint had gone to the Deputy Minister it would have been adjudicated under the terms of the Collective Agreement.

[193] At 11:16 a.m. on April 12, Ms. Ferrara emailed Ms. Puga. She advised that as a result of the email exchange that had taken place between Ms. Puga and Ms. van der Boom, the investigation was going to be expanded and she requested an extension of the required timelines in order to complete the investigation. She advised that because of Ms. van der Boom's absence, the matter would be assigned to a new investigator and should be completed by April 30.

[194] At 3:09 p.m., Ms. Puga confirmed that the Union was prepared to extend the time to respond to the complaint until April 30.

[195] Late in the afternoon of April 12, Ms. Ferrara asked Mr. Sethi to take over the investigation. He was given a copy of the March 1 Letter and Ms. Ferrara orally briefed him concerning the interviews of the Complainant and Ms. Vernon. He was also given a list of witnesses to interview. That list contained the names of the store employees set out on the March 9 List.

[196] Mr. Sethi asked Mr. Reynolds to set up the interviews on the following two days. Arrangements were made to interview four employees the afternoon of April 13 and an additional six employees on April 14. The interviews were scheduled at 45 minutes intervals. Three of the auxiliary employees on the interview list, including Mr. Ty, were not available on short notice and were never interviewed.

[197] In advance of the interviews, Mr. Sethi prepared a series of questions. He prepared his questions based on the March 1 Letter. He did not have notes of the interview with the Complainant or Ms. Vernon.

[198] The employee interviews took place as scheduled. On April 13, Chris Pelzer, Rod Symchych, Ms. Rondeau and Ms. Kirkland were interviewed. On the morning of April 14, Wanda Leong, Robert Bertram, Gerry Little and Ms. Whynot were interviewed. In the afternoon of April 14, Ms. Wylie and Ms. Canizares were interviewed. Ms. Wylie and Ms. Canizares were by far the most critical of Ms. Vernon. I note that of the 10 employees interviewed, the LDB at the trial called only Ms. Kirkland, Ms. Wylie and Ms. Canizares. Ms. Rondeau and Ms. Whynot testified for Ms. Vernon.

[199] The employees met with Mr. Sethi and Mr. Reynolds. Mr. Reynolds appears to have taken no role in the interviews other than as note taker.

[200] The employees were asked to describe Ms. Vernon's management style. They were then asked whether they had ever heard, witnessed or been subject to profane language, inappropriate comments or behaviour, or discriminatory behaviour. They were asked whether Ms. Vernon had used various expressions.

[201] Mr. Sethi thought most of the employees had given their statements in a straightforward manner. He did not find Ms. Whynot or Ms. Rondeau credible. He did not believe that Ms. Whynot was taking the allegations seriously and he thought Ms. Rondeau was exaggerating and defensive.

[202] Following the interviews, Mr. Sethi gave oral updates to Mr. Branham, Ms. Ferrara and Mr. Zelenika. He told them that the employees had to some extent corroborated the complaint.

[203] Mr. Sethi recommended to Ms. Ferrara and Mr. Zelenika that Ms. Vernon be terminated. He testified that he thought a reprimand would not be an adequate response, while a suspension or demotion would be considered constructive

dismissal. He said Ms. Vernon's lack of remorse was a factor in his recommendation.

[204] Following the interviews, on either April 15 or 16, Mr. Zelenika, Mr. Branham and Ms. Ferrara met to discuss Ms. Vernon. The information before them at the meeting was the March 1 Letter and the oral reports they had received concerning the interviews of the Complainant, Ms. Vernon and the employees. They had not read and did not have the notes of any of those interviews.

[205] Mr. Zelenika, Mr. Branham and Ms. Ferrara concluded that Ms. Vernon should be terminated. Mr. Branham says he based his decision on the fact the complaints had all been found to be true, that Ms. Vernon had refused to admit the truth and the likelihood that she would change was slim. Ms. Ferrara believed that termination was appropriate as opposed to some other disciplinary procedure because Ms. Vernon had continually maintained that she had not engaged in the alleged behaviour and had never offered an apology. Although there was some discussion of alternative discipline, they decided to terminate Ms. Vernon, notwithstanding that neither the Union nor the Complainant sought Ms. Vernon's termination.

#### **H. The Termination Meeting - April 19, 2010**

[206] On April 19, Ms. Vernon was summoned to a meeting with Mr. Branham and Ms. Ferrara. At the meeting, Mr. Branham told her that the investigation had concluded and that the investigation had confirmed that she had engaged in gross workplace misconduct including bullying, harassing and intimidating behaviour. Mr. Branham told her "Your actions have embarrassed me and the organization. Frankly, your conduct is shameful and has irreparably damaged your employment relationship with the Liquor Distribution Branch".

[207] Ms. Vernon was clearly dismayed. She left the meeting to speak with Mr. Talmey who had accompanied her and was waiting outside. Mr. Talmey then joined the meeting.

[208] When the meeting resumed Ms. Vernon said "So my understanding is you are calling me a monster". Ms. Ferrara replied "No Stephanie. It is not your intent, it is how you impacted".

[209] Mr. Branham told Ms. Vernon that the LDB had no alternative but to terminate her employment. He indicated that in recognition of her length of service he was prepared to offer her the opportunity to tender her resignation. Mr. Talmey and Ms. Vernon both testified that Ms. Ferrara said that if Ms. Vernon resigned she would be given a letter of reference. Ms. Ferrara denied that a letter of reference was offered. Mr. Branham has no recollection of a reference letter being discussed.

[210] Ms. Vernon was initially advised that she had until Wednesday, April 21 at 5:00 p.m. to decide whether she was prepared to resign. If she did not respond by that date, her pay would be suspended and the LDB would proceed with the recommendation for termination. When Mr. Talmey asked for additional time, Mr. Branham agreed to extend the deadline until 12:00 p.m. on Friday April 23. He told them he needed an answer by noon because he did not want to be waiting around until 4:00 p.m. on a Friday to get her decision.

**I. Events April 23 - May 18, 2010**

[211] Ms. Vernon did not agree to resign. On April 23, 2010, Mr. Branham couriered to her home a letter advising that she was suspended without pay, seniority, or benefits for an indefinite period pending a recommendation being made to the General Manager for the termination of her employment. The suspension was effective immediately. He advised he was making a recommendation to the General Manager for her termination.

[212] On April 28, Ms. van der Boom returned to Vancouver. On May 11, she interviewed Ms. Catamo-Meyer and Ms. van Pelt. She testified that she had been requested to interview Ms. Catamo-Meyer because her name had come up in several of the interviews conducted by Mr. Sethi.

[213] In cross examination, Ms. van der Boom admitted that she had put Ms. Catamo-Meyer on the March 9 List. She agreed that she may have done so because she believed she would have negative things to say about Ms. Vernon based on Ms. van der Boom's interaction with her when she was transferred from Ironwood to Marpole.

**J. The Recommendation Memo**

[214] On May 18, 2010, Ms. van der Boom prepared the Recommendation Memo for Mr. Chambers. The Recommendation Memo was signed by Ms. van der Boom and Mr. Sethi. Ms. van der Boom said they were the co-authors. Mr. Sethi said that Ms. van der Boom drafted the letter and he simply signed it. I accept Mr. Sethi's evidence on this point.

[215] Ms. van der Boom knew Mr. Chambers would rely on the Recommendation Memo to make his decision about whether or not to dismiss Ms. Vernon. She knew as a labour relations advisor that the Recommendation Memo should be as objective as possible and that it was important that the Recommendation Memo was true and accurate.

[216] When Ms. van der Boom prepared the Recommendation Memo, she had a copy of Mr. Sethi's and Mr. Reynolds' interview notes with the employees. She also had a copy of the March 1 Letter together with her notes of her interviews with the Complainant, Ms. Vernon, Ms. van Pelt and Ms. Catamo-Meyer. She could not recall if she had looked at Ms. Vernon's performance reviews in advance of writing the Recommendation Memo.

[217] The Recommendation Memo commences by setting out the specific complaints the Complainant made in the March 1 Letter and at her March 9 interview. The Recommendation Memo then goes on to say that Ms. Vernon emphatically denied each and every allegation although she did concede that she does use foul language in the workplace and may have used the expression "Chinky food". The Recommendation Memo states that Ms. Vernon denied harassing or bullying her staff.

[218] Neither of those statements was accurate. Ms. Vernon did not emphatically deny all of the allegations. She admitted some and gave explanations for others. Ms. Vernon had not been asked in her interview whether she bullied her staff.

[219] Ms. van der Boom then referenced the employee interviews. She did not, however, accurately set out what the employees said in those interviews. For example, she indicated that all but one employee described Ms. Vernon's management style in a negative light. Two witnesses had described Ms. Vernon quite positively and others were not entirely negative.

[220] Ms. van der Boom wrote that the evidence suggested that Ms. Vernon frequently used expletives as part of her every day vernacular and that she was indiscriminate as to where, when and around whom she spoke this way: office, warehouse, store, staffroom and in front of customers and employees alike. While all the employees agreed that Ms. Vernon used profanities in the workplace, only two of the persons interviewed suggested she swore in front of customers. Several said that she did not.

[221] Ms. van der Boom made specific reference to the Liquor Load Incident. She did not mention, however, that Ms. Vernon had never been asked about that incident and had had no opportunity to respond to that allegation.

[222] Ms. van der Boom wrote that when asked if Ms. Vernon has a beautiful store but operates it in a disrespectful manner, all but two witnesses emphatically agreed. In fact, three witnesses disagreed with that statement and three others only partially agreed. Only one employee could be said to have "emphatically" agreed. Ms. van der Boom agreed that the word "emphatic" was not objective.

[223] The Recommendation Memo then went on to reference that one witness had been called at least seven times in a two-day period when she was sick. Aggravating the situation was that Ms. Vernon had refused to pay the employee short term benefits, had coded the individual as being away without approval and directed the employee to a meeting with herself and labour relations. Ms. van der Boom admitted

on cross examination the employee in question was the Complainant.

Ms. van der Boom did not disclose that Ms. Vernon had been in consultation with the labour relations department concerning the employee's absence or that Ms. van der Boom herself had advised Ms. Vernon to direct the employee to a meeting with labour relations.

[224] The Recommendation Memo indicates that since Ms. Vernon's suspension numerous other LDB employees have come forward and shared with the employer their negative experiences with Ms. Vernon. In fact, only one employee came forward voluntarily, being Ms. van Pelt. Ms. Catamo-Meyer had been sought out by Ms. van der Boom.

[225] Ms. van der Boom wrote that every employee who had been interviewed corroborated the allegations of misconduct, stating they were afraid to report Ms. Vernon's behaviour because they were convinced she was well connected with the high ranking LDB officials at Head Office. In fact, six of the employees who had been interviewed did not make such an allegation. Ms. van der Boom on cross examination admitted the statement was not accurate and that she wrote it to bolster her argument that Ms. Vernon was a bully.

[226] Ms. van der Boom wrote that the interviews corroborated the allegations in the March 1 Letter. In fact, they did not. While many witnesses, including Ms. Vernon, acknowledged her use of expletives in the workplace, all denied she had ever used the term "f\*\*\*\*\*g Muslims".

[227] In regard to the various other specific complaints, no witnesses corroborated the Complainant. In regard to the alleged one-minute rule, it was clear from the interviews that Ms. Vernon did have a three-minute rule in relation to the time that employees should spend with wine representatives.

[228] In the Recommendation Memo, Ms. van der Boom did mention that there were two witnesses who denied any misconduct on Ms. Vernon's part but she suggested they lacked credibility due to their close personal relationships with

Ms. Vernon. She indicated their evidence was suspect, for example with respect to Ms. Vernon's use of expletives in the workplace. In fact, both Ms. Rondeau and Ms. Whynot, in their interviews, acknowledged Ms. Vernon's use of expletives in the workplace.

[229] In her letter, Ms. van der Boom wrote that:

Given Ms. Vernon's attitude during the Employer's Investigation, her lack of honesty, her failure to understand the gravity of the situation and the serious and devastating impact of her misconduct we believe that she will not improve her behaviour. Even when provided with the opportunity to respond to the allegations, Ms. Vernon was defiant, aggressive and dishonest, denying virtually every allegation. As the investigation has borne out the complaint filed by [the Complainant], Ms. Vernon's patent denial of any wrongdoing, coupled with her refusal to take any responsibility for her behaviour is that much more egregious.

[230] What the Recommendation Memo did not disclose was that Ms. Vernon had been given no opportunity to respond to the matters raised in the interviews, that she had agreed to stop swearing, was prepared to apologize for her use of profanity and that the Complainant and the Union were not seeking her dismissal. The Recommendation Memo made no mention of her exemplary work reviews or the fact that in her 30 years of employment there had never been a complaint made against her.

[231] Ms. van der Boom agreed at the conclusion of her cross-examination that in the Recommendation Memo, instead of reporting objectively the findings of the investigation, she was trying to prove that Ms. Vernon was guilty of misconduct and should be terminated.

### **K. The Termination**

[232] Mr. Zelenika forwarded the Recommendation Memo to Mr. Chambers on May 20, 2010. Mr. Chambers agreed with the recommendation and signed the Dismissal Letter on May 21. The Dismissal Letter was couriered to Ms. Vernon's home on May 31, 2010.

**POST-TERMINATION EVENTS**

[233] Following her termination, Ms. Vernon suffered from anxiety and panic attacks. Her physical symptoms of anxiety included chest tightness, headaches, decreased concentration, decreased appetite, and sleep disturbance. For several weeks she was reluctant to leave her home. She was put on anti-anxiety and antidepressant medication. Her symptoms continued into 2011.

[234] Mr. Talmey testified that Ms. Vernon has been devastated by her termination. Previously she had a happy and bubbly personality. It now appears only in flashes. She went into hiding and could not talk to or face meeting her friends. She still has difficulty sleeping. She had always looked up to the people at the LDB and feels betrayed by the way she was treated.

[235] Ms. Vernon's family physician, Dr. Sheilagh Phillips, testified that Ms. Vernon is suffering from adjustment disorder with mixed anxiety and depressed mood. She opined that Ms. Vernon's condition was caused by the allegations made, her dismissal and the manner of dismissal.

[236] Subsequent to her dismissal, Ms. Vernon requested a letter of reference from the LDB. The LDB refused to provide one.

[237] In August 2010, Ms. Vernon started work at a fitness centre. She works 13 hours a week at \$10 per hour. It is the only money she has earned since her dismissal. The LDB does not allege a failure to mitigate.

[238] Ms. Vernon remained on medication until February 2011. In February 2011, she attended a job workshop and began three months of private counselling to deal with her fears and anxiety.

**POSITION OF THE PARTIES**

**A. Ms. Vernon**

[239] Ms. Vernon submits that she was dismissed without cause and is entitled to an award of damages equivalent to 18 to 22 months salary. She further submits that

it was a term of her employment contract that the LDB would treat her fairly and in good faith if she was dismissed. She submits that the LDB dismissed her in a harsh and unduly insensitive manner which caused her injury. She seeks an award of aggravated damages to compensate her for mental distress. In addition she submits that the LDB's conduct should be condemned and the court should make an award of punitive damages.

**B. The LDB**

[240] The LDB submits that Ms. Vernon's bullying of her subordinates gave it cause to dismiss her without notice. It further submits that Ms. Vernon was not honest in the March 25 interview and that in itself justifies her dismissal.

[241] The LDB submits that Ms. Vernon's employment contract is subject to the provisions of the *Public Sector Employers Act*, R.S.B.C. 1996 c. 384 (the "PSEA") and its *Employment Termination Standards*, BC Reg. 379/97 (the "Regulation"). Pursuant to the PSEA and the Regulation a public sector employee is limited to 18 months notice. The LDB concedes that if Ms. Vernon is entitled to reasonable notice, 18 months notice would be appropriate. The LDB submits that in the circumstances of this case the plaintiff is not entitled to aggravated or punitive damages. It concedes that the PSEA and the Regulation do not bar such damages if they are otherwise warranted.

**DISCUSSION**

**A. Context of Employment**

[242] In *McKinley v. BC Tel*, 2001 SCC 38, [2001] 2 SCR 161, the Supreme Court of Canada endorsed a "contextual approach" when determining whether an employer has just cause for dismissal. The contextual approach requires an examination not only of the alleged misconduct, but also the nature of the employment and the status of the employee. I make the following findings of fact concerning the context of Ms. Vernon's employment.

[243] Ms. Vernon was a 30-year employee of the LDB who had devoted her entire working career to the service of the LDB. When she commenced employment, she was 19 years old, fresh out of high school.

[244] Ms. Vernon entered into a male dominated workforce that operated on military lines. Profanity was common in the workplace. While the make-up of the work force has changed, profanity remains.

[245] Ms. Vernon was a very demanding boss. She was loud and flamboyant. She ran a tight ship and expected much from her employees. She expected her employees to follow her rules. She demanded perfection. She pushed her employees hard, but was as hard on herself as she was on her subordinates. Their shortcomings did not go unnoticed or uncommented upon. They were made fully aware when they failed to live up to her standards.

[246] Ms. Vernon encouraged and mentored her staff and several owe their advancement in the LDB to the interest Ms. Vernon took in their careers. She could sometimes be intimidating. Like a drill sergeant, she tended to be harder on new employees than on old.

[247] Mr. Bertram, one of the employees interviewed in the investigation accurately captured the essence of Ms. Vernon when he said in the interview:

--- everything said has to be put into context. She can be caring, considerate, thoughtful and can be a wonderful person to work under even with all of her faults. Stephanie is rough but redeems herself because she cares about people.

[248] Long before she was transferred to Ironwood, Ms. Vernon was widely known throughout the LDB as “The Little General”. The LDB newsletter, The Grapevine, reported that she got the name because she was a hard worker and would try to get others to work at her pace and be as organized as possible.

[249] For 30 years, Ms. Vernon worked at the LDB without a single complaint being made against her. Her performance reviews could not have been more positive. She

considered her staff to be family. Until the Complainant came forward, Ms. Vernon was not aware that her management style was in any way unacceptable.

**B. The Investigation**

[250] Before turning to the question of cause, it is first necessary to comment on and make findings of fact about the investigation.

[251] Ms. van der Boom had been Ms. Vernon's labour relations advisor. In that regard she had often counselled Ms. Vernon in regard to employment situations. Ms. Vernon had confided in her and looked to her for assistance in dealing with employee issues.

[252] Ms. van der Boom had advised and guided Ms. Vernon in regard to difficulties that she had with both the Complainant and Ms. Catamo-Meyer. Ms. Vernon and Ms. van der Boom had a lengthy conversation about the Complainant less than two weeks before delivery of the March 1 Letter.

[253] Ms. Ferrara testified that if an advisor has had a prior involvement in a matter, a different advisor should handle any investigation arising out of the matter. Given Ms. van der Boom's role as Ms. Vernon's labour relations advisor and her specific role in advising Ms. Vernon about the Complainant, she should not have been put in charge of the investigation.

[254] As a result of her interview of the Complainant, Ms. van der Boom appears to have been convinced of Ms. Vernon's wrongdoing. Following that interview, she put together a list of employees to interview including Ms. Catamo-Meyer, who she knew would likely have negative things to say about Ms. Vernon.

[255] The interview of Ms. Vernon was contrary to its intended purpose and unfair in the extreme. Ms. Vernon thought she was meeting with her labour relations advisor and area manager to discuss in an informal setting a complaint that had been made against her. Instead, she was the subject of an intense interrogation.

The person who she had relied on as her labour relations advisor was now her interrogator. Ms. Vernon was upset at the meeting. She had good reason to be.

[256] At the outset of the meeting she was given a copy of the March 1 Letter, which contained eight separate complaints, and asked for her immediate response. When she denied certain allegations, she was met with the classic question, “Why would the complainant lie?” It is of course a question that is impossible to answer.

[257] Ms. Vernon and Ms. van der Boom both spoke in raised voices. Ms. Vernon told Ms. van der Boom that she did not understand what was going on or the nature of the accusations against her.

[258] I do not accept Ms. van der Boom’s evidence that Ms. Vernon initially denied all of the allegations. A review of her notes indicated that she did no such thing. She did deny certain specific allegations including use of the derogatory term “f\*\*\*\*\*g Muslims”. She gave a different perspective concerning many of the allegations. She acknowledged her swearing but she pointed out to Ms. van der Boom that Ms. van der Boom also swore. She said that she would not swear in the future and there is no evidence that she did.

[259] Ms. van der Boom made oral reports concerning this meeting to Mr. Branham and Ms. Ferrara. They have both testified that Ms. Vernon denied all the allegations. I find that the source of that information was Ms. van der Boom’s oral reports.

[260] Ms. van der Boom’s mistaken report had serious consequences. Thereafter, all persons at the LDB involved in the investigation proceeded on the basis that Ms. Vernon was denying all the allegations, when in fact that was not so. One of the major reasons that Mr. Branham and Ms. Ferrara decided to terminate Ms. Vernon was their mistaken belief that she did not admit any wrongdoing.

[261] Following the interview with Ms. Vernon, Ms. van der Boom had communications with Ms. Puga. Ms. Puga advised that neither the Complainant nor the Union wanted Ms. Vernon dismissed. They wanted a finding that the complaint was valid, an apology, Ms. Vernon moved to another store and be directed to

participate in sensitivity training involving harassment and interpersonal communication. The LDB had such programs but they did not then or had they in the past offered them to Ms. Vernon.

[262] After Ms. van der Boom left at the beginning of April, the matter stalled until Ms. Puga contacted Ms. Ferrara on April 9, and advised her that the matter must be resolved by April 23 or a complaint would be made to the Deputy Minister. This appears to have set off a race to judgement.

[263] In the afternoon of April 12, Ms. Puga agreed to hold off any action until April 30. Shortly thereafter, Ms. Ferrara asked Mr. Sethi to continue the investigation. She gave him an oral report on the investigation, a list of witnesses to interview and the March 1 Letter.

[264] Mr. Sethi and Mr. Reynolds then conducted interviews over the next two days of 10 employees. Mr. Sethi's notes of those interviews comprise 127 pages. Mr. Reynolds' notes are some 104 pages. Mr. Sethi acknowledged that he did not ask the individual employees about several of the specific complaints set out in the March 1 Letter.

[265] The interviews were not simple question and answer affairs. They were interrogations. They were not carried out in an impartial manner. Witnesses who spoke favourably about Ms. Vernon were accused of lying. I accept the evidence of Ms. Whynot and Ms. Rondeau that the interviewers chided and yelled at them when they gave answers that supported Ms. Vernon.

[266] Following the interviews, Mr. Sethi orally reported to Mr. Branham, Mr. Zelenika and Ms. Ferrara. He does not give them his notes. None of the witnesses were able to recall exactly what they were told. Given the length of the interviews and the limited time available to conduct the briefings, I conclude that the briefings did not include all the information provided by the employees.

[267] Mr. Sethi told Mr. Branham, Mr. Zelenika and Ms. Ferrara that the employees had to some extent corroborated the Complainant's allegations of bad language and unprofessional behaviour.

[268] Mr. Sethi recommended to Mr. Zelenika and Ms. Ferrara that Ms. Vernon be terminated. He said that Ms. Vernon's lack of remorse was a factor in his decision. Mr. Sethi's knowledge concerning Ms. Vernon's lack of remorse had to come from the briefing he received from Ms. Ferrara.

[269] Mr. Branham, Mr. Zelenika and Ms. Ferrara then met on April 15 or 16. They decided that Ms. Vernon should be terminated. Ms. Ferrara testified that options other than termination were not appropriate because Ms. Vernon had denied any wrongdoing and offered no apology. Mr. Branham says that one of the reasons that they had to terminate Ms. Vernon was because she did not admit any of the allegations and there was no practical way of supervising her. Their source of Ms. Vernon's denials of wrongdoing was Ms. van der Boom's earlier erroneous briefing.

[270] When Mr. Branham, Mr. Zelenika and Ms. Ferrara decided to fire Ms. Vernon, less than 96 hours had elapsed from the time that Mr. Sethi was asked to take over the investigation. In their rush to judgment, nobody at the LDB ever stepped back and put the allegations in context.

[271] Ms. Vernon was a 30-year employee. She had been a store manager for almost 12 years. In all those years there had never been a single complaint made against her. Her performance reviews were glowing. The LDB stores are all Union shops. The Collective Agreement protects workers from harassment and abuse of managerial authority. The lack of any prior complaints against Ms. Vernon should have given them cause to stop and reflect.

[272] Further, the fact that Ms. Vernon was a tough boss who swore was not a surprise. Mr. Zelenika acknowledged that swearing was common in LDB stores. The nickname "The Little General" was well known.

[273] The Recommendation Memo suggests that Ms. Vernon swore in the customer areas of the store. Indeed, two people in the interviews said as much, although others suggested that swearing was restricted to staff areas. A modicum of reflection should have made clear that swearing was not taking place in the front portion of the store in front of customers. It is inconceivable that such conduct would be taking place on an ongoing basis and never have been the subject of any reports or complaints by customers.

[274] Mr. Ferrara and Mr. Branham never appear to have considered the actual complaints in the March 1 Letter. Outside of Ms. Vernon's swearing which was acknowledged, the balance of the complaints concerned Ms. Vernon's management style and her harsh corrections of the Complainant on various occasions for alleged misdeeds. When they decided to terminate Ms. Vernon, most of the specific complaints remained unproven.

[275] The meeting of April 19 was badly handled. Telling Ms. Vernon, after a 30-year exemplary career, that her actions are embarrassing and shameful could not have been more insensitive. Ms. Vernon had given her entire working life to the LDB and to treat her in such a manner was egregious, shocking and unnecessary.

[276] Equally egregious was the LDB leaving Ms. Vernon in limbo from April 19 to May 31. Having rushed to terminate her employment, the LDB did not take any steps to further the process between the meeting of April 19 and the preparation of the Recommendation Memo on May 18. During that time it was common knowledge throughout the LDB that Ms. Vernon had been suspended. Mr. Chambers approved the dismissal on May 21, but Ms. Vernon was not advised for a further 10 days when the dismissal letter was finally delivered to her home.

[277] Ms. van der Boom testified that the Recommendation Memo was supposed to be a balanced recommendation to the General Manager. It was anything but. On her cross-examination, with some reluctance, she ultimately admitted that when she wrote the Recommendation Memo, instead of objectively reporting the investigations findings, she was trying to prove Ms. Vernon guilty of misconduct.

[278] The investigation was flawed from beginning to end. It was neither objective nor fair.

[279] Because of her prior dealings with Ms. Vernon, Ms. van der Boom should not have conducted it. Once she concluded the Complainant was credible, Ms. van der Boom lost all objectivity. She became the prosecutor, not the objective investigator. She added Ms. Catamo-Meyer to the March 9 List because she believed she would provide damaging information. She did not bother to interview Ms. Chan who both the Complainant and Ms. Vernon stated witnessed two of the incidents. Her oral reports of her interview with Ms. Vernon are inaccurate and misleading. She told Ms. Ferrara and Mr. Branham that Ms. Vernon was denying all allegations when her notes of the meeting clearly show otherwise. The Recommendation Memo is replete with inaccuracies.

[280] Ms. van der Boom is, however, not alone in rushing to judgment. Within 48 hours of being asked to investigate, Mr. Sethi had recommended Ms. Vernon's dismissal. He made his recommendation based on his interviews, the March 1 Letter and the information he was given that Ms. Vernon did not acknowledge any wrongdoing. He knew that Ms. Vernon had no opportunity to respond to the information developed in the interviews. He knew that he had asked few questions concerning the specific allegations in the March 1 Letter.

[281] Similarly, Mr. Branham, Mr. Zelenika and Ms. Ferrara were prepared to terminate a 30-year employee with a spotless record based on Mr. Sethi's report. Mr. Zelenika and Ms. Ferrara both knew that Ms. Vernon was upset at the March 25 interview, yet they blindly accepted without question that she had denied all the allegations.

[282] If this was an administrative law case, the LDB's decision to terminate Ms. Vernon would be quashed as a breach of natural justice. This is, however, not such a case. Although Ms. Vernon is a public sector employee, public law duties of procedural fairness do not apply. Ms. Vernon's relationship with the LDB is contractual. Her claim must be decided on the principles that govern all private law

employment relationships: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190. Regardless of the flaws in the investigation, if the LDB had cause they were entitled to dismiss Ms. Vernon without notice.

**C. Termination - Legal Principles**

[283] The primary issue for determination in this litigation is whether Ms. Vernon was terminated for cause. Absent a fixed term contract or contractual notice provision, it is an implied term of an employment contract that an employer may dismiss an employee at any time by giving the employee reasonable notice or payment in lieu. If the employer shows cause, the employee may be dismissed without notice or payment in lieu: *Ansari v. British Columbia Hydro and Power Authority*, [1986] 2 B.C.L.R. (2d) 33 at 36 (S.C.), aff'd (1986), 55 B.C.L.R. (2d) xxxiii (C.A.) ("*Ansari*").

[284] In *Panton v. Everywoman's Health Centre Society*, 2000 BCCA 621, 82 B.C.L.R. (3d) 364, Saunders J.A. discussed the legal principles governing just cause at paras. 25-28:

[25] The degree of misconduct required to permit dismissal without notice has varied with the times in which the misconduct has been judged. In concept, cause was described as early as 1886 by Lord Esher, M.R. in *Pearce v. Foster* (1886), 17 Q.B.D. 536 at 539-40:

The rule of law is that where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him. It is not that the servant warrants that he will duly and faithfully perform his duty; because, if that were so, upon breach of his duty his master might bring an action against him on the warranty. But the question is, whether the breach of duty is a good ground for dismissal. I have never hitherto heard any doubt that that is the true proposition of law. What circumstances will put a servant into the position of not being able to perform, in a due manner, his duties, or of not being able to perform his duty in a faithful manner, it is impossible to enumerate. Innumerable circumstances have actually occurred which fall within that proposition, and innumerable other circumstances which never have yet occurred will occur, which also will fall within the proposition. But if a servant is guilty of such a crime outside his service as to make it unsafe for a master to keep him in his employ, the servant may be dismissed by his

master; and if the servant's conduct is so grossly immoral that all reasonable men would say that he cannot be trusted, the master may dismiss him.

[26] In Canada, Mr. Justice Schroeder described cause in these often quoted terms in *R. v. Arthurs*, [1967] 2 O.R. 49, 62 D.L.R. (2d) 342 (C.A.), [reversed on other grounds 1969 S.C.R. 850] at p. 348:

If an employee has been guilty of serious misconduct, habitual neglect of duty, incompetence, or conduct incompatible with his duties, or prejudicial to the employer's business, or if he has been guilty of wilful disobedience to the employer's orders in a matter of substance, the law recognizes the employer's right summarily to dismiss the delinquent employee.

[27] Mr. Justice Vancise discussed cause for dismissal in terms of a repudiation of the contract in *Jim Pattison Industries v. Page*, [1984] 4 W.W.R. 481, 10 D.L.R. (4th) 430 (Sask.C.A.), saying at p. 490:

There is no middle ground. The employer either has cause or he does not. ... An employee who repudiates the contract of employment is not entitled to "some" notice because he or she has been a "good" employee prior to such repudiation.

[28] In general, then, just cause is employee behaviour that, viewed in all the circumstances, is seriously incompatible with the employee's duties, conduct which goes to the root of the contract and fundamentally strikes at the employment relationship.

[285] In *Boulet v. Federated Co-operatives Ltd.* 2001MBQB 174, 157 Man.R. (2d) 256 aff'd 2002 MBCA 114, 170 Man. R. (2d) 9 ("*Boulet*"), McCawley J. summarized the principles applicable when cause is alleged at para. 3:

1. Each case must be decided on its facts.
2. An employer's displeasure at an employee's performance is not enough to warrant dismissal. There must be some serious misconduct or substantial incompetence.
3. The onus of proving just cause rests with the employer and the standard of proof is beyond a balance of probabilities.
4. The performance of an employee, especially one in a management position, must be gauged against an objective standard.
5. The employer must establish:
  - (a) the level of the job performance required,
  - (b) that the standard was communicated to the employee,
  - (c) that suitable instruction and/or supervision was given to enable the employee to meet the standard,
  - (d) the employee was incapable of meeting the standard, and
  - (e) the employee was warned that failure to meet the standard would result in dismissal.

6. Where the employee's performance is grossly deficient and the likelihood of discharge should be obvious to the employee, warnings and reasonable notice are not required.
7. While the standard of incompetence to warrant discharge for cause is severe, the threshold of incompetence necessary to warrant dismissal for cause is significantly lower where dismissal is preceded by many warnings indicating unsatisfactory performance.
8. In considering whether an employer has provided adequate warning to an employee, where the dismissal is for repeated instances of inadequate work performance, the employer must show:
  - (a) it has established a reasonable objective standard of performance,
  - (b) the employee has failed to meet those standards,
  - (c) the employee has had warnings that he or she has failed to meet those standards and the employee's position will be in jeopardy if he or she continues to fail to meet them; and
  - (d) the employee has been given reasonable time to correct the situation.
9. An employer who has condoned an inadequate level of performance by his employee may not later rely on any condoned behavior as a ground for dismissal.
10. Condoned behavior is relevant if the employee fails to respond after appropriate warnings. Condonation is always subject to the implied condition that the employee will be of good behavior and will attempt to improve.

[286] As a result of the decision of the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41 at para. 40, the standard of proof set out in point 3 of *Boulet* must be restated. The onus is on the employer to prove just cause on the balance of probabilities, not on some higher standard.

[287] In *Rodrigues v. Shendon Enterprises Ltd.*, 2010 BCSC 941 ("*Rodrigues*"), the facts were very similar to those in the present case. The plaintiff had begun working for the Dairy Queen in 1993 at a minimum wage while performing basic tasks required at a fast food outlet. Over time she was promoted and in 2003 she was the manager, a position she held until she was terminated in 2009. She was dismissed one day after receiving a probation letter. Prior to the probation letter her employer had never advised her of any faults or shortcomings in her work or warned her about her behavior. She regarded most of the employees as her friends and socialized with some of them outside of work. She thought they knew that her use of foul

language and derogatory comments was her way of doing things and not intended to hurt feelings.

[288] In words that could be applied to Ms. Vernon, Mr. Justice Butler summarized the evidence concerning the plaintiff's management style at para. 16:

[16 ] It was evident from all of the witnesses called by Shendon that Ms. Rodrigues is a strong personality. She did not hide her disapproval of employees when she considered their performance to be inadequate. She did not hesitate to call someone stupid or use foul language to emphasize her disapproval. Other employees were generally wary of her. Even Mr. Kenna was afraid to confront her directly. They were particularly cautious in their dealings with her when she was in a poor mood. She never attempted to hide her moods which were obvious to all other employees. On the other hand, there is little doubt that she was a competent employee who knew how to run a Dairy Queen franchise as well or better than the other employees. It would also have been evident to others that she had the best interests of the Dairy Queen at heart. Indeed, her criticism of other employees always related to work that she thought could be performed better or faster. The other employees enjoyed her company when she was in a good mood. She considered the other employees to be her friends and was evidently unaware of the impact she had on them when she was critical or when she was in a foul mood.

[289] In considering the cause allegation, Butler J. examined whether the plaintiff's conduct went to the root of the employment contract. He found the plaintiff's conduct prior to dismissal did not amount to just cause stating at paras. 34-35:

[34] ...Contrary to the position taken in that letter, it is alleged at trial that the conduct before June 24, 2009, did justify summary dismissal. I cannot accept that submission and find that prior to June 24, 2009, Ms. Rodrigues had not engaged in serious misconduct and had not committed acts that struck at the root of the employment relationship. It is significant that the most contentious issue was the manner in which she disciplined or criticized other employees. In taking those actions, Ms. Rodrigues was attempting to improve the performance of the employees. Her actions, while inappropriate and unacceptable, did not amount to a repudiation of the employment contract. Rather, her actions amounted to poor performance of the management responsibilities that she was attempting to fulfil.

[35] Much of the conduct referred to in the probation letter had been permitted at the Dairy Queen for a long time, or was relatively trivial in nature. An example of conduct that had been permitted for some time was Ms. Rodrigues' swearing. It was apparent at trial that all employees used foul language. While Ms. Rodrigues may have done so more than others, when employees have not been told that such behaviour is inappropriate, it is disingenuous to use that behaviour as a basis to justify summary dismissal.

[290] A distinction between this case and *Rodrigues* is that in *Rodrigues*, unlike in this case, none of the employees supported the manager.

[291] Another case dealing with allegations of just cause arising from an employee's inappropriate conduct is *Rieta v. North American Air Travel Insurance Agents Ltd.*, (1996), 19 C.C.E.L. (2d) 117 (B.C.S.C.) aff'd (1998), 52 B.C.L.R. (3d) 114 (C.A.) ("*Rieta*"). In *Rieta*, the evidence at the trial indicated that the plaintiff berated, belittled, and harshly criticized other employees. The trial judge concluded that there was little doubt from the evidence that the plaintiff's performance with respect to the manner in which she managed her subordinates needed improvement. The Court concluded however that viewed objectively the plaintiff's conduct did not justify summary dismissal.

#### **D. Cause for Dismissal**

##### ***i. Overview***

[292] The LDB has maintained throughout this trial that they had cause to terminate. In their statement of defence they raised 24 particulars. In closing submissions, they acknowledged that no evidence had been called to support the particulars 5, 7, 10, 11 and 12. It submits that there is some evidence to support the balance of the particulars.

[293] The LDB also submits that Ms. Vernon lied in the March 25 interview and that in itself is grounds for termination: *Di Vito v. MacDonald Dettwiler & Associates Ltd.* (1996), 21 C.C.E.L (2d) 137 (B.C.S.C.); *Richardson v. Davis Wire Industries Ltd.* (1997), 33 B.C.L.R. (3d) 224 (S.C.).

##### ***ii. Findings and Comments on Witnesses***

[294] Before turning to the particulars, it is first necessary to make certain additional findings of fact with regard to some of the contested evidence and comment on the credibility and evidence of certain witnesses.

[295] I accept Ms. Vernon's evidence that until the complaint was made she did not understand that her conduct was in any way unacceptable. She had worked for the

LDB without complaint or reprimand for 30 years. Nobody had ever told her she was doing anything wrong. Her employment reviews were exemplary. Her criticism of staff was directed to improving their work. It was never personal. She always had the best interest of the LDB at heart.

[296] I reject the suggestion that she lied at the March 25 meeting. I accept her evidence that at the meeting she was confused and upset and did not fully understand the allegations that were being made against her.

[297] I accept the evidence of Ms. Vernon and Mr. Talmey that at the April 19 meeting Ms. Ferrara told Ms. Vernon that she would be given a letter of reference if she resigned. Absent a letter of reference there would be no reason why Ms. Vernon would resign.

[298] Generally speaking, I accept the evidence of the witnesses called by Ms. Vernon in regard to her management of Ironwood. I found them to be credible and sincere concerning their experiences working for Ms. Vernon. Those witnesses all found Ms. Vernon to be an exemplary manager. Several testified she was the best manager that they had ever had. I note that three of those witnesses, Ms. Whynot, Ms. Rondeau, and Ms. Johnson are still employed in management positions with the LDB. It cannot have been easy for them to give testimony in this case against their employer.

[299] Considerable evidence was led concerning Ms. Vernon's use of profanities. There is little doubt and I find that Ms. Vernon did swear. I find, however, that her swearing was limited to the non-retail portions of the store. In this regard, I accept the evidence of Ms. Rondeau, Ms. Whynot, Ms. Johnston, Ms. Chan and Ms. Wylie. I reject the evidence of Ms. Kirkland, Ms. Canizares, and the Complainant to the contrary. As noted earlier in the discussions concerning the investigation, if Ms. Vernon was on a regular basis using loud and profane expletives in the customer area of the store it is inconceivable that a member of the public would not have complained to the LDB. None did.

[300] I find that Ms. Vernon never used the expression “f\*\*\*\*\*g Muslims”. I reject the Complainant’s evidence that she did. The Complainant testified that Ms. Rondeau was present when this was said. Ms. Rondeau denied that it was ever said and I accept her evidence. None of the other witnesses suggested that Ms. Vernon used that phrase.

[301] The evidence of Ms. van Pelt and Ms. Catamo-Meyer was not helpful. I found neither to be objective. As noted by Ms. Johnson, Ms. van Pelt and Ms. Vernon clashed from the outset. Ms. Vernon took over from Ms. van Pelt and, as is not unusual in such situations, there was tension between them. Ms. van Pelt left Ironwood in February 2006. She was a senior employee with the LDB but did not raise any complaint about Ms. Vernon until after Ms. Vernon had been suspended. I do not accept her evidence that she felt threatened by Ms. Vernon’s comment that “if I didn’t like you, your ass would be out of here”.

[302] Ms. Catamo-Meyer worked at Ironwood for approximately two months. She did not wish to go to Ironwood because she had been held up when she worked there previously. When she was transferred to Ironwood, she began to see a counselor for post-traumatic stress disorder. She mistakenly believed that Ms. Vernon had a role in transferring her to Ironwood.

[303] Ms. Catamo-Meyer was undoubtedly unhappy at Ironwood. After a dispute with Ms. Rondeau, she advised that she was not prepared to work further at Ironwood. She was then transferred to Marpole but refused to report. As a result of her refusal to report she was ultimately suspended three days without pay.

[304] There are several problems with Ms. Wylie’s evidence. At trial she said that the Liquor Load Incident happened in July 2008. In her interview she said the incident had happened four years previously which would place it in 2006. She testified that at the time of the incident that she was on light duties. Documents in evidence at trial indicate that she did not commence light duties until September 22, 2009.

[305] Ms. Wylie denied using or writing the word “f\*\*k”, but she wrote that very word on Ms. Vernon’s poster. Ms. Wylie says that by November 2009 she did not admire Ms. Vernon, but signs her poster in complimentary terms in three locations. Such conduct is inconsistent with someone who claims to have been so offended by Ms. Vernon.

[306] Ms. Wylie refused to acknowledge that she socialized from time to time with Ms. Vernon or that Ms. Vernon presented her with flowers when she became a regular. I accept the evidence of Ms. Chan that Ms. Wylie did attend a girls’ night with Ms. Vernon and Ms. Chan and the evidence of Ms. Mejias that Ms. Vernon gave her and Ms. Wylie flowers when they were promoted.

[307] A particular concern with Ms. Wylie’s evidence concerning the Liquor Load Incident is Ms. Mejias’ testimony. Ms. Mejias admits she swore a false affidavit when she deposed that she was present at work on the day it occurred. In her affidavit she describes Ms. Wylie running out of Ms. Vernon’s office, red faced and in tears.

[308] How the affidavit came to be is troubling. Ms. Wylie must have claimed that Ms. Mejias was a witness to the incident. The difficulty was, however, that Ms. Mejias did not work at Ironwood after 2007 and could not have been present at the time Ms. Wylie said the incident occurred.

[309] Given her false affidavit, I cannot accept Ms. Mejias’ evidence that Ms. Wylie phoned and told her of the Liquor Load Incident. Ms. Wylie has no recollection of such a call. That evidence would appear to be a desperate attempt to justify her affidavit.

[310] Ms. Vernon denies the Liquor Load Incident ever happened. Given all of the difficulties with Ms. Wylie’s evidence, I do not accept her evidence concerning the Liquor Load Incident.

[311] I generally accept the evidence of Ms. Canizares. I believe she had a difficult time working for Ms. Vernon. While Ms. Vernon did not treat her differently than she treated other employees, Ms. Canizares was new to the LDB and Ms. Vernon’s

manner and lack of patience undoubtedly made her life tougher and she suffered for it.

[312] Ms. Canizares acknowledged that some of the things she said in the interview with Mr. Reynolds and Mr. Sethi were exaggerated. For example, when she was interviewed she said that she said every single sentence has an “F” word in it. She agreed that was not so.

[313] It is important to note, that when Ms. Canizares came to Ironwood she had never before worked at the LDB. Ms. Vernon was her mentor. She agreed that she did learn from Ms. Vernon and she left Ironwood when she was promoted to Store Manager. Ms. Vernon attempted to assist her in her new position when she had difficulty with certain employees.

[314] In regard to the Complainant, I accept that she honestly feels aggrieved by her treatment by Ms. Vernon. Ms. Vernon was demanding. Some of the difficulties appear to have arisen from the Complainant’s misunderstanding of circumstances and context. For example, a comment to an employee “I will kill you’ in the context of tucking in a shirt, is not one that most people would take seriously. The Complainant, I suspect because of her troubled upbringing and the many difficulties she has had in her life, did so. Similarly, when she was criticized for the manner in which she did her work, she took offense even when the criticism was justified.

[315] The Complainant has a low threshold when it comes to conduct she considers offensive. Evidence of this can be found in the letter that she wrote concerning the incident when she worked at the Marpole store, her refusal to serve customers at Marpole who she felt insulted her and her refusal to apologize to a customer at Ironwood because she was convinced she had done nothing wrong.

***iii. The Particulars***

[316] Particulars 1, 2, 3 and 6 deal with Ms. Vernon’s intemperate language. There is no doubt that Ms. Vernon swore; she readily acknowledged it. The Complainant in her interview indicated that just about all the employees swore. Prior to the meeting

of March 25 it had never been suggested to Ms. Vernon that her use of language was inappropriate. The LDB acknowledges that the use of bad language, in and of itself, is not grounds for termination.

[317] Particular 4 relates to Ms. Vernon apparently stating at some stage to regular employees when talking about staffing a Sunday shift, “Don’t worry, I have some low lifes working those shifts”, referring to her auxiliary employees. Those comments were not directed to the auxiliaries themselves. They were made in private conversation with other workers. Ms. Vernon’s treatment of auxiliary employees appears to have been exemplary. Ms. Chan and Mr. Ty who were auxiliaries working at Ironwood had nothing but praise for Ms. Vernon. Her comment in a private conversation is not grounds for dismissal.

[318] Particular 8 deals with Ms. Vernon’s relationship with Ms. Canizares. It is alleged that she used profane, harsh, demeaning and bullying language to Ms. Canizares and at one time said to her “I am the Queen, the Assistants are my court jesters and the rest are the low of the low.”

[319] There is no doubt that Ms. Vernon did speak harshly from time to time to Ms. Canizares. Ms. Canizares was obviously impacted by her language. I accept Ms. Canizares’ evidence that she found Ms. Vernon most difficult to work for. These are, however, matters of degree. When Ms. Canizares was promoted to a managerial position she thanked Ms. Vernon for her assistance. Ms. Vernon also reached out to her when she was having difficulty in her new job. Ms. Canizares did not think that Ms. Vernon went out of her way to hurt her feelings - it was just the way she was.

[320] Ms. Vernon treated Ms. Canizares no different than she treated other employees. The LDB had never suggested to her that her treatment of employees was in any way improper. I accept Ms. Vernon’s evidence that she did not realize the negative impact that she had on certain employees, including Ms. Canizares. Many employees thrived under her management style. If that style was no longer

appropriate for the management of an LDB store the LDB owed Ms. Vernon a chance to change her ways before summarily dismissing. They did not give it to her.

[321] As to the “I am the Queen” comment it was made in a private conversation in the context of explaining the hierarchy of the store. Ms. Vernon had concerns that Ms. Canizares was being too friendly with staff who reported to her. She was trying to explain in somewhat colorful language the relationships that existed. It is certainly not a firing offence.

[322] Particulars 9, 13 -14 deal with Ms. Catamo-Meyer. As noted, I did not find her to be an objective witness. Particular 9 is a general allegation that Ms. Vernon frequently used profane, harsh, demeaning and bullying language towards her. Particular 13 deals with discussions that took place after Ms. Catamo- Meyer’s daughter was injured in an automobile accident. Particular 14 is an allegation that Ms. Catamo-Meyer ultimately resigned in part, because of the plaintiff’s demeaning, bullying and offensive management style.

[323] It is important to note that Ms. Catamo-Meyer worked at Ironwood for less than two months. She came to Ironwood reluctantly. While Ms. Vernon was acting as Area Manager, and not at Ironwood, Ms. Catamo-Meyer got into a dispute with Ms. Rondeau and refused to come back to work. She sent in a medical report saying that she was no longer able to work at Ironwood.

[324] Ms. Vernon arranged that Ms. Catamo-Meyer be sent to Marpole. This apparently angered her because it was further away from her home and she initially refused to report. Ultimately, she attended a meeting with Ms. Vernon and Ms. van der Boom as a result of which she was suspended three days without pay.

[325] Ms. Catamo-Meyer worked at Marpole for six weeks and then got a job offer to work with handicapped children. She was certified to teach special needs children and submitted her resignation from the LDB.

[326] Ms. Catamo-Meyer had filed a grievance when she was transferred to Ironwood. When she arrived at Ironwood, Ms. Vernon attempted to reassure her about security and told her that she would not be left alone in the store.

[327] Shortly after Ms. Catamo-Meyer commenced work at Ironwood her daughter was in an accident. Ms. Vernon asked her numerous questions about the accident. Ms. Catamo-Meyer found the questions intrusive and unpleasant and it caused her some stress. She acknowledges that after the accident Ms. Vernon told her that she could take a family illness day and also told her that she could use vacation days if that she was taking too much time.

[328] Nothing in Ms. Vernon's treatment of Ms. Catamo-Meyer gives rise to cause for dismissal. Ms. Catamo-Meyer was clearly upset when she came to Ironwood. Her daughter's accident was obviously a matter of concern. The fact that Ms. Vernon would call wanting to know when she would return to work may have been distressing to Ms. Catamo-Meyer but it was consistent with Ms. Vernon's obligations to manage absenteeism.

[329] When Ms. Catamo-Meyer refused to work at Ironwood Ms. Vernon had little choice but to move her to another store. The fact that the new store was further from her home was a direct consequence of her refusal to work at Ironwood. I have little doubt that Ms. Catamo-Meyer's decision to leave the LDB was triggered by the series of events that commenced with the LDB's decision to transfer her to Ironwood and then Marpole. Ms. Vernon played but a minor role in those events and was not the cause of her departure.

[330] Particulars 15 to 21 concern Ms. Vernon's dealings with the Complainant. As with Ms. Canizares, I accept that Ms. Vernon on occasion spoke with the Complainant in a manner in which the Complainant found harsh and demeaning. She did not treat the Complainant different than other employees and she had no reason to believe that her treatment of the Complainant was unacceptable.

[331] Some of the matters raised by the Complainant are difficult to determine. For example one of the complaints concerns Ms. Vernon telling the Complainant to put her name tag on and tuck in her uniform. After she complied, the Complainant told Ms. Vernon she had no problem doing so and Ms. Vernon allegedly responded “Yeah because you know that if you don’t do it I’ll kill you”. The Complainant said that she found her tone to be serious and threatening and was psychologically disturbed by the comment. Given the Complainant’s background, it may well be that she was. Objectively, however, such a comment seems far from offensive and not one that Ms. Vernon would appreciate that someone would take seriously.

[332] Similarly, the complaint concerning Ms. Vernon telling her and Ms. Chan “to work, not talk” seems almost frivolous. Ms. Chan was never asked about this incident.

[333] As previously set out, I do not accept the Complainant’s evidence that Ms. Vernon made the “f\*\*\*\*\*g Muslim” comment. While Ms. Vernon acknowledged her use of bad language, she vehemently denied and did deny in the March 25 meeting ever making such a comment. Indeed, when one reads the notes of the March 25 meeting she was clearly disturbed by the suggestion she made such a racially insensitive comment.

[334] Ironwood had a multi-cultural work force. No other employees suggested that Ms. Vernon’s language was ever racially motivated. No employees said that they had heard her make the comment “f\*\*\*\*\*g Muslim”. I do not accept it happened.

[335] Similarly, I cannot accept the Complainant’s evidence concerning the potluck luncheon and the allegation that Ms. Vernon pretended to be sick after having sampled Ms. Canizares’ dish. No witness corroborated that evidence and Ms. Vernon’s evidence was that she did not even attend the potluck.

[336] Particular 20 deals with the incident on the till with the wine representative. I accept it did occur. I do not accept the Complainant’s evidence of the manner in which it occurred. The Complainant had been told she was not to deal with wine

representatives while working as a cashier. Other witnesses indicated that customers in line were ignored and another cashier had to open while the Complainant carried on the discussion with the wine representative. Ms. Vernon was justified in criticizing the complainant for her actions. It may well be so that she did so too harshly. It is not a firing offence.

[337] Particular 21 deals with the hearing incident and the phone messages Ms. Vernon left when the Complainant stopped coming to work. Ms. Chan witnessed the hearing incident. She said the Complainant did ask twice what she was supposed to do. She said she worked the rest of the shift with the Complainant and the Complainant did not appear to be upset. When it occurred the Complainant was most fragile and Ms. Vernon's comments did not assist. Ms. Vernon, however, was not aware of the many difficulties the Complainant was dealing with.

[338] In regard to the allegation that Ms. Vernon left 11 messages on the Complainant's home phone and cell phone threatening her with dismissal unless she returned to work immediately, I note that those messages were played in Court. Ms. Vernon's tone was neither harsh nor threatening. It contains no profane language. Ms. Vernon was most appropriately seeking information as to when the Complainant would be returning to work. Given her need to staff the store, it was appropriate that she did so.

[339] On February 16, the Complainant untruthfully told Ms. Vernon she had no problems with her. Ms. Vernon did not know that the Complainant concealing her true feelings. Ms. Vernon directed the Complainant to attend at Head Office after consulting Ms. van der Boom.

[340] Particular 22 deals with Ms. van Pelt and the suggestion that Ms. van Pelt had somehow been threatened when Ms. Vernon said words to her "I like you too but if I didn't, your ass would be out of here so fast". As stated above, I do not accept her evidence that she felt threatened by Ms. Vernon's comment. Ms. van Pelt was not an objective witness. She and Ms. Vernon clashed from the outset. Ms. van Pelt

arranged her own transfer from the Ironwood store in 2005. She came forward to complain about Ms. Vernon only after Ms. Vernon had been suspended.

[341] Particular 23 deals with the Liquor Load Incident. I have found that the Liquor Load Incident did not occur.

[342] Particular 24 references an incident that allegedly occurred in 2005 shortly after Ms. Vernon started work at Ironwood. It concerns the Big River Brew Pub. Big River is an important customer of the LDB. The particular alleges that Ms. Vernon rudely refused the manager of Big River, Mr. Tomlinson, permission to return empties to the Ironwood store and rudely imposed unreasonable requirements on when and how empties could be returned.

[343] The source of this allegation was Ms. van Pelt. It occurred when Ms. van Pelt was still employed at Ironwood.

[344] Mr. Tomlinson had limited recollection of the alleged incident. Ms. Vernon and Mr. Talmey gave evidence that Ms. Vernon discussed the incident with Mr. Talmey and not only did he not discipline her for it, he thought she did not do anything wrong in handling the matter.

[345] At that time Mr. Talmey was Ms. Vernon's superior. They had no personal relationship. Even if it could be suggested that Ms. Vernon did something wrong, and the evidence does not support the conclusion that she did, her conduct was clearly condoned by her superior.

#### ***iv. Analysis***

[346] The LDB submits that it had no choice but to terminate Ms. Vernon. It says it owed a duty to its other employees to remove Ms. Vernon from its work force. In support of this proposition it cites *Fleming v. Ricoh Canada Inc.*, [2003] O.J. No. 5557 (Ont. S.C.J.) and *Leach v. Canadian Blood Services*, 2001 ABQB 54, 7 C.C.E.L. (3d) 205. Both of those cases involved claims of sexual harassment. In my opinion, different considerations arise in such a case than in the case at bar. This

case concerns how Ms. Vernon managed her store - not allegations that she was seeking sexual gratification in the work place.

[347] That said, the LDB did have an obligation to investigate when the Complainant came forward. A thorough and fair investigation would have revealed that Ms. Vernon's management techniques could use some improvement. The LDB had courses that could have assisted her, but it chose not to make the courses available.

[348] The LDB's disciplinary policy takes into account various matters including the employee's length of service, the nature of the misconduct, previous behavior that may have been the subject of discipline and the employee's response during the investigative process. In most cases, the LDB engages in progressive discipline and will provide warnings to an employee before they are terminated. In this case even the Union and the Complainant did not seek Ms. Vernon's termination.

[349] Mr. Sethi testified that suspension or demotion was not considered because it might be considered constructive dismissal. The fallacy with that proposition is that the LDB alleges it had cause to dismiss without notice. If the LDB did have the right to summarily dismiss Ms. Vernon a constructive dismissal action would be doomed to fail. An employer with cause to dismiss cannot be held liable for constructive dismissal if it imposes a lesser penalty.

[350] In this case the major factor which led to the decision to terminate Ms. Vernon was her response to the complaint. Ms. Ferrara, Ms. van der Boom, Mr. Sethi and Mr. Branham all testified to the importance of Ms. Vernon's refusal to acknowledge any wrongdoing. In this regard they were acting under a factual misapprehension. Ms. Vernon had not denied all wrongdoing. She had offered an apology. Many of the allegations she did not even learn about until after she was terminated.

[351] The LDB was under no obligation to continue to employ Ms. Vernon. It could end her employment at any time. Absent cause, however, it was contractually obligated to give pay in lieu of notice.

[352] The onus is on the LDB to establish cause to summarily dismiss Ms. Vernon. While some of the alleged allegations were serious, many were not. Those that have been proved in this action do not amount to cause. I find that the LDB did not have grounds to summarily dismiss Ms. Vernon without notice.

[353] While Ms. Vernon's use of language and her treatment of employees may at times have been problematic, and possibly have warranted some form of discipline, her conduct did not strike at the root of or amount to a repudiation of her employment contract. As in *Rodrigues* most of the allegations went to the manner in which she criticized her staff. While some of her conduct may have been inappropriate, she was at all times trying to improve the performance of her employees. At their worst, some of her actions amounted to poor performance of the management responsibilities that she was attempting to fulfil.

[354] Ms. Vernon was a senior employee with an untarnished record. She was entitled to a warning that her conduct was not acceptable. If she had then continued with such conduct, it is possible the LDB would have had grounds to dismiss. They did not have such grounds in May 2010.

## **DAMAGES**

### **A. Notice Period**

[355] The reasonableness of notice must be determined in each case with regard to the character of the employment, the length of service, the age of the employee and the availability of similar employment having regard to the experience, training and qualifications of the employee: *Bardal v. Globe & Mail Ltd.* (1960), 24 D.L.R. (2d) 140 (Ont. H.C.) at 145; *Honda Canada Inc. v. Keays*, 2008 SCC 39, [2008] 2 S.C.R. 362 at para. 28 ("*Honda*"). Absent exceptional circumstances, 18 to 24 months is the upper limit for reasonable notice: *Ansari*.

[356] Ms. Vernon submits that in the circumstances of this case, she is entitled to between 18 and 22 months' notice. In this regard, she points out that she was 49 years old at the time of her dismissal, having spent approximately 30 years in the

employment of the LDB. She submits her extremely long service, as well as her age, dictates in favour of a notice award at the upper end of the scale. The fact that she worked in a managerial capacity further supports a high notice award.

[357] The LDB submits as a result of the *PSEA* and the *Regulation*, notice is limited to 18 months. Ms. Vernon concedes that if the *PSEA* and *Regulation* apply, she is limited to 18 months' notice.

[358] Pursuant to s. 14.4 of that *PSEA*, the Lieutenant Governor in Council may, by regulation, establish employment termination standards for an employee. It is common ground that the *Regulation* sets out such standards and in the case of Ms. Vernon, would limit her notice to 18 months. The point of contention between the parties is whether the *Regulation* applies to Ms. Vernon's contract of employment.

[359] The governing sections are s. 14.4(3) and (5). Those sections read:

- (3) If the Lieutenant Governor in Council establishes an employment termination standard by regulation under subsection (1), effective on the date on which the regulation comes into force,
  - (a) the standard is deemed to be included in all applicable contracts of employment that are commenced, changed or renewed on or after that date, and
  - (b) any provision of an applicable contract of employment referred to in paragraph (a) that conflicts or is inconsistent with the standard is void to the extent of the conflict or inconsistency.
- ...
- (5) On the effective date,
  - (a) the Employment Termination Standards regulation (B.C. Reg. 379/97) is deemed to have been amended as set out in the Schedule to the *Public Sector Employers Amendment Act, 2002*,
  - (b) the employment termination standards set out in that regulation are deemed to be included in all applicable contracts of employment that are in force on the effective date or are commenced, changed or renewed on or after that date, and
  - (c) any provision of an applicable contract of employment referred to in paragraph (b) that conflicts or is inconsistent with any of

those standards is void to the extent of the conflict or inconsistency.

[360] Pursuant to s. 14.4(3), the standard is deemed to be included in all applicable contracts of employment that are commenced, changed or renewed on or after the effective date. Pursuant to s. 14.4(5)(b), the standard applies to all applicable contracts of employment that are in force on the effective date or are commenced, changed or renewed on or after that date. The parties are agreed that the effective date is October 21, 2002.

[361] In support of her submission that the standard does not apply, Ms. Vernon relies on *Schewe v. Okanagan University College*, 2001 BCSC 343 (“*Schewe*”). That case turned on the wording of s. 4.2 of the *PSEA* as it then was. That section is identical to s. 14.4(3) of the present legislation. In *Schewe*, Brooke J. held that the contract of employment had not commenced, changed or been renewed after the effective date and, accordingly, the *PSEA* had no effect on the plaintiff’s claim. A similar result was reached in *Butcher v. British Columbia (Public Sector Employers’ Council)*, 2003 BCCA 192.

[362] The *Public Sector Employers Amendment Act*, 2002 S.B.C. 2002, c. 64 (the “*Amendment Act*”) was passed the year following the decision in *Schewe*. The *Amendment Act* repealed s. 4.2 and added sections 14.4(3) and (5). While s. 14.4(3) is identical to the old s. 4.2, s. 14.4(5) is a new section. That section makes clear that the employment termination standards set out in the *Regulation* are deemed to be included in all contracts of employment in force on the effective date.

[363] Ms. Vernon’s contract of employment was in force on the effective date. I find that the *Regulation* is deemed to be included in her contract of employment. Pursuant to the *Regulation*, she is limited to 18 months’ notice.

[364] The LDB concedes that if Ms. Vernon is entitled to notice, 18 months’ notice is appropriate.

[365] In 2009, Ms. Vernon earned \$69,183. While her base salary was less than \$69,000, Ms. Vernon consistently earned more than her stated salary as a result of working as the Relief Area Manager. She testified she would have continued to act as Relief Area Manager had she not been terminated.

[366] Damages are meant to compensate Ms. Vernon for the income she would have earned during the notice period. The LDB agrees that her damages should be calculated on the basis of her 2009 earnings. In 2009, she earned \$5,765.25 per month and, accordingly, she is entitled to damages for lack of notice of \$103,774.50 (\$5,765.25 x 18). From this sum must be deducted \$6,601.32 being the amounts Ms. Vernon earned in the 18 months subsequent to May 31, 2010, leaving an award of \$97,173.18.

**B. Pension**

[367] The parties have agreed that if Ms. Vernon is entitled to damages for wrongful dismissal, she is also entitled to damages for her loss of pension. In that regard the parties have agreed as follows:

- a) the province will make the employer's contribution to the pension plan for the notice period awarded by the court;
- b) Ms. Vernon will make the employee's contribution to the pension plan for the notice period awarded by the court;
- c) Ms. Vernon will be entitled to credit in the pension plan for service during the notice period as if she had been employed during that period and her pension will be calculated as if she had been employed during that period.

**C. Special Damages**

[368] Ms. Vernon incurred expenses of \$57 per month to replace her MSP coverage from May 2010 to December 2010 and \$60.50 a month from January 2011 until she was covered on Mr. Talmey's plan. Ms. Vernon has incurred out of pocket

medical expenses of \$131.43 which would have been covered by the defendant's plan. Ms. Vernon spent \$4,352.88 attending the job workshop (\$502.88) and private counselling (\$3,850). The LDB agrees that all these amounts are recoverable.

**D. Aggravated Damages**

[369] Aggravated damages in wrongful dismissal cases are compensatory in nature. It is an implied term of an employment contract that an employer will act in good faith in the manner of dismissal: *Beggs v. Westport Foods Ltd.*, 2011 BCCA 76, 14 B.C.L.R. (5th) 1 at para 48.

[370] In *Honda*, the Supreme Court of Canada reviewed the history of the law relating to damages in case of employment termination, noting that aggravated damages must be considered in the context of a breach of the employment contract. The court held that aggravated damages were recoverable for breach of contract if such damages were contemplated by the parties at the time they entered the contract. As an employment contract is inherently subject to cancellation on notice, or payment in lieu of notice, damages for mental distress caused merely by the dismissal are not recoverable since dismissal is a clear legal possibility.

[371] In *Honda*, Bastarache J. summarized the discussion of aggravated damages at paras. 57-59:

[57] Damages resulting from the manner of dismissal must then be available only if they result from the circumstances described in *Wallace*, namely where the employer engages in conduct during the course of dismissal that is "unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive" (para. 98).

[58] The application of *Fidler* makes it unnecessary to pursue an extended analysis of the scope of any implied duty of good faith in an employment contract. *Fidler* provides that "as long as the promise in relation to state of mind is a part of the bargain in the reasonable contemplation of the contracting parties, mental distress damages arising from its breach are recoverable" (para. 48). In *Wallace*, the Court held employers "to an obligation of good faith and fair dealing in the manner of dismissal" (para. 95) and created the expectation that, in the course of dismissal, employers would be "candid, reasonable, honest and forthright with their employees" (para. 98). At least since that time, then, there has been expectation by both parties to the contract that employers will act in good faith in the manner of

dismissal. Failure to do so can lead to foreseeable, compensable damages. As aforementioned, this Court recognized as much in *Fidler* itself, where we noted that the principle in *Hadley* “explains why an extended period of notice may have been awarded upon wrongful dismissal in employment law” (para. 54).

[59] To be perfectly clear, I will conclude this analysis of our jurisprudence by saying that there is no reason to retain the distinction between “true aggravated damages” resulting from a separate cause of action and moral damages resulting from conduct in the manner of termination. Damages attributable to conduct in the manner of dismissal are always to be awarded under the *Hadley* principle. Moreover, in cases where damages are awarded, no extension of the notice period is to be used to determine the proper amount to be paid. The amount is to be fixed according to the same principles and in the same way as in all other cases dealing with moral damages. Thus, if the employee can prove that the manner of dismissal caused mental distress that was in the contemplation of the parties, those damages will be awarded not through an arbitrary extension of the notice period, but through an award that reflects the actual damages. Examples of conduct in dismissal resulting in compensable damages are attacking the employee’s reputation by declarations made at the time of dismissal, misrepresentation regarding the reason for the decision, or dismissal meant to deprive the employee of a pension benefit or other right, permanent status for instance (see also the examples in *Wallace*, at paras. 99-100).

[372] In this case, for reasons I have already set out, the investigation of the complaint was unfair. Ms. Vernon was given no real opportunity to deal with the allegations in the complaint and no opportunity at all to deal with the allegations made in the course of the interviews. The unfair investigation, however, does not give rise to aggravated damages.

[373] The foundation of the claim for aggravated damages is the manner of dismissal. The meeting of April 19, 2010, could not have been handled in a more insensitive manner. Ms. Vernon, a 30-year employee with an unblemished record, was summoned to a meeting where she was told her conduct was shameful and that she was an embarrassment to the LDB. When she asked for additional time to consider her position she was told she only had until noon on Friday because Mr. Branham was not prepared to wait around until 4:00 p.m. on a Friday to learn her decision. Having told Ms. Vernon that she was to be terminated, the LDB then suspended her without pay and left her in limbo from April 19 to May 31 when they finally got around to telling her she was fired.

[374] The Supreme Court of Canada has long recognized the importance of work in a person's life. It is the foundation of its jurisprudence concerning employer conduct at the time of termination. In *Reference Re Public Service Employee Relations Act* (Alta), [1987] 1 S.C.R. 313, Dickson C.J. noted at p. 368:

Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.

[375] In *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, Iacobucci J. said at para. 95:

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

[376] Ms. Vernon's position with the LDB was clearly an essential component of her sense of identity, self-worth and emotional well-being. It had been her entire working career. When she was asked to speak on behalf of all the recipients at the long service awards banquet on October 9, 2009, she said in part:

We have been invited here this evening because we have reached an important milestone in our careers in the public service. Whether it's 30 or 35 years, I believe it is a great personal achievement each of us is celebrating, and not simply marking the passage of time. You should be very proud of your dedication, perseverance, resilience, your ability to adapt to change, your courage and your determination. These are some of the qualities in you that have brought you here tonight.

When I was hired in 1980 I was so excited. I lived down the street from the 28<sup>th</sup> and Main Liquor store and I thought it seemed like a cool place to work. What can I say? I was 19...but it turned out that I was right. I made so many wonderful friends and had so many great experiences. I knew this was going to be my career.

Everyone here should be proud of the work he or she has done, not only in providing service to the public throughout their career, but in developing this next wave of leaders who will follow us.

In the end it is the people that make it all worthwhile. So in closing I would like to acknowledge the many people in this room who I have worked for and with over the past 30 years. Thank you for your friendship, your support and your generosity. It has meant everything.

[377] I find that the LDB's conduct during the course of dismissal was unfair and unduly insensitive. I accept the evidence of Ms. Vernon and Dr. Phillips that the manner of dismissal caused Ms. Vernon mental distress over and above the normal distress and hurt feelings resulting from the dismissal itself. She is entitled to an award of aggravated damages.

[378] Ms. Vernon seeks aggravated damages of \$35,000 - \$40,000. I note the comments of Newbury J.A. in *Warrington v. Great-West Life Assurance Co.* (1996), 139 D.L.R. (4th) 18 (B.C.C.A.) at para. 25 where she stated that "courts should exercise caution in their awards for mental distress".

[379] In *Altman v. Steve's Music*, 2011 ONSC 1480 which involved the insensitive termination of a 30-year employee suffering from lung cancer, the court awarded \$35,000 in aggravated damages. The court held that the employer's actions must be viewed in the context of the employee's age, length of service, state of health and relationship with the employer.

[380] In this case Ms. Vernon was a long serving faithful employee. The manner of her termination was devastating and caused her serious harm. I award \$35,000 in aggravated damages.

#### **D. Punitive Damages**

[381] Unlike aggravated damages (which are compensatory in nature), punitive damages are directed towards punishment. The leading authority remains *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595 at para. 36 ("*Whiten*").

[382] The three objects of punitive damages are retribution, deterrence and denunciation. The Supreme Court of Canada has directed trial courts to approach punitive damages with caution and restraint and to resort to them only in exceptional circumstances: *Whiten* at para. 69.

[383] An award of punitive damages is rational only when compensatory damages do not adequately achieve the objectives of retribution, deterrence and denunciation: *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19, [2002] 1 S.C.R. 678 at para. 87.

[384] In *Whiten*, at para. 94, the Court set out the factors that should be taken into account when considering an award for punitive damages:

(1) Punitive damages are very much the exception rather than the rule, (2) imposed *only* if there has been high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour. (3) Where they are awarded, punitive damages should be assessed in an amount reasonably proportionate to such factors as the harm caused, the degree of the misconduct, the relative vulnerability of the plaintiff and any advantage or profit gained by the defendant, (4) having regard to any other fines or penalties suffered by the defendant for the misconduct in question. (5) Punitive damages are generally given only where the misconduct would otherwise be unpunished or where other penalties are or are likely to be inadequate to achieve the objectives of retribution, deterrence and denunciation. (6) Their purpose is not to compensate the plaintiff, but (7) to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened. (8) Punitive damages are awarded *only* where compensatory damages, which to some extent are punitive, are insufficient to accomplish these objectives, and (9) they are given in an amount that is no greater than necessary to rationally accomplish their purpose. (10) While normally the state would be the recipient of any fine or penalty for misconduct, the plaintiff will keep punitive damages as a "windfall" in addition to compensatory damages. (11) Judges and juries in our system have usually found that moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.

[385] As noted in *Honda*, in the context of damages for conduct in the course of dismissal, care must be taken when aggravated damages have been awarded to avoid the pitfall of double compensation or double punishment for the same actions. Punitive damages are restricted to advertent wrongful acts that are so malicious and outrageous that they are deserving of punishment on their own.

[386] In this case, I have made an award of aggravated damages arising out of the insensitive manner in which Ms. Vernon was terminated. To award punitive damages for the same conduct would lead to double punishment for the same acts.

[387] There is, however, one exception. At the termination meeting of April 19, Ms. Ferrara told Ms. Vernon that if she agreed to resign, the LDB would provide her with a reference letter. While an employer is under no obligation to give a reference letter (*Shinn v. TBC Teletheatre B.C.*, 2001 BCCA 83, 85 B.C.L.R. (3d) 75), to offer Ms. Vernon a reference letter, conditional on her resignation, was reprehensible and departed to a marked degree from ordinary standards of decent behaviour. If Ms. Vernon's conduct was sufficiently serious that the LDB had the right to summarily dismiss her without notice, it would have been improper for the LDB to give her a reference letter. To offer a reference letter as a carrot to resign, is, in my opinion, conduct which is properly the subject matter of retribution, deterrence and denunciation.

[388] *Whiten* directs that when punitive damages are awarded, they should be assessed in an amount reasonably proportionate to such factors as the harm caused, the degree of the misconduct, the relative vulnerability of the plaintiff and any advantage of profit gained by the defendant. At the time the proposal was made, Ms. Vernon could not have been more vulnerable. She had just been told she was being terminated from her job of 30 years. She knew that without a reference she would have little chance of finding suitable new employment. The LDB knew that if she voluntarily resigned, it could avoid a possible lawsuit for wrongful termination in which it would have to justify its treatment of a 30-year employee. I award \$50,000 in punitive damages.

### **COSTS**

[389] The plaintiff has been successful in this litigation. Unless there are matters of which I am not aware, my tentative view is the plaintiff is entitled to costs at Scale B. If either party seeks a different cost order or if there are any other matters arising from these reasons, counsel should make written submissions within 30 days of the

date of these reasons. Any responsive submissions should be filed within 15 days thereafter.

“R.B.T. Goepel J.”

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The Honourable Mr. Justice Richard B.T. Goepel