

Aggravated Damages – Employers Beware!



I was invited recently to speak at the HRPA Conference on the issue of bad faith damages. I was focusing on the history of these awards and quantum. Then on May 2, 2024, the Ontario Court of Appeal released a decision in *Krmpotic v. Thunder Bay Electronics Limited*, 2024 ONCA 332 which upheld an aggravated damages award in the sum of \$50,000 from the manner of dismissal and the employee's resulting mental distress, without supporting medical evidence, and I thought, well that is nothing new. Is it even noteworthy? I think it is because employers keep making mistakes.

Aggravated damages, moral damages, the former Wallace damages, Honda damages, are awarded following a breach of the duty of good faith and fair dealing in the manner of dismissal.

That has meant a variety of things over the years but there are a few key takeaways as to how to avoid liability for these damages, or, if you are an employee, what type of conduct may land you some icing on your cake.

Conduct which creates exposure includes:

1. Dishonesty as to the reason for termination
2. Insensitive conduct during the termination process
3. Failure to pay statutory entitlements
4. Lack of clarity in the termination letter as to what are statutory entitlements v. the without prejudice offer
5. Attempts to force an employee to resign
6. Alleging cause for termination when no cause exists
7. Termination in a fashion which causes humiliation
8. Selecting timing of termination to intentionally deprive the employee of the vesting of some benefit, bonus or LTI entitlement
9. Disseminating statements about the employee which will cause harm to professional reputation
10. Termination immediately upon returning from a medical leave
11. Failure to conduct workplace harassment investigation where the employee has complained of workplace harassment
12. Failure to conduct a proper investigation prior to termination where the employee is being terminated as a result of misconduct or harassment

Those dozen things will keep you out of hot water as an employer – at least in so far

as aggravated damages are concerned. If as an employee you experience any of the above situations, well there could be another \$25,000 (the average aggravated damage award) or so in damages for you at trial.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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