

# [Court Of Appeal Sends Expensive Message To Employer For Termination Post-Medical Leave](#)



The recent decision of [Krmptic v. Thunder Bay Electronics Limited, 2024 ONCA 332](#), involves an employee with 30 years of service that was terminated the day he returned from a medical leave following back surgery.

## **Trial Decision**

The trial judge awarded the employee a 24 month notice period and made a finding that the employee was medically incapable of mitigating his damages during the notice period. The trial judge also awarded the employee \$50,000 in aggravated damages because the employer had terminated the employee in a manner that breached its duty of good faith and to operate in a reasonable, honest and candid manner.

## **Court of Appeal Decision**

The employer appealed the finding with respect to the employee's inability to mitigate as the employee had presented no expert medical evidence to prove that he was unable to work. Instead, the employee relied on testimony from himself and family members to establish that his physical condition precluded him from performing the physical requirements of his occupation. The employer also appealed the award of aggravated damages as the employee provided no medical evidence to establish that the manner of termination caused significant mental distress. The employer argued that there was no evidence that the employee suffered mental distress beyond the normal hurt expected from being terminated.

The Ontario Court of Appeal rejected both of the employer's arguments. The Court held that there was no requirement to establish physical incapacity only by expert medical evidence. The Court found that it was reasonable for the trial judge to rely on the evidence presented during the trial to conclude that the employee was physically unable to mitigate. The Court also rejected the employer's arguments with respect to aggravated damages. The Court held that insensitive conduct in the manner of dismissal is a breach of the duty of good faith which can warrant aggravated damages.

## **Takeaways**

This decision highlights the risks that an employer can face when terminating an

employee immediately upon their return from a medical leave. Not only can an employer face additional human rights or aggravated damages, but the employee may also be able to circumvent the duty to mitigate based on their own evidence that they are physically incapable of mitigating during the reasonable notice period.

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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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