# Employers Are Cautioned To Be Mindful Of Their Conduct In Carrying Out Employee Terminations




In the very recent decision of *Krmpotic v. Thunder Bay Electronics Limited*, the Ontario Court of Appeal highlighted a very important lesson for employers: terminations must be handled with honesty and sensitivity or the consequences can be costly! Employees should also be mindful that obtaining legal advice is a good idea if they feel that they have been terminated in an insensitive fashion.

The employer terminated Mr. Krmpotic without cause from his carpentry position after about 30 years of employment. At the time of his dismissal, Mr. Krmpotic had recently returned to work following back surgery. The company cited financial reasons for the termination but provided no evidence to substantiate this. Mr. Krmpotic brought an action for wrongful dismissal, mental distress, and aggravated damages. The trial judge found that the real reason for his termination was Mr. Krmpotic's physical limitations, and that the dismissal breached the employer's duty of good faith, requiring honesty, reasonableness, and candor. Mr. Krmpotic was awarded 24 months of notice and $50,000 in aggravated damages.

On appeal, the appellant employer argued that the trial judge erred by concluding that Mr. Krmpotic could not have sought alternative employment to mitigate his losses due to his physical condition. The employer also challenged the award of aggravated damages.

**Duty to Mitigate**

The Court of Appeal agreed with the trial judge's finding that Mr. Krmpotic's age, combined with his recovery from back surgery and the physically demanding nature of his role, rendered him unable to reasonably pursue alternative employment in his field.

**Aggravated Damages**

The appellants cited the Supreme Court of Canada's decision of *Honda Canada Inc. v. Keays* to argue that aggravated damages can only be awarded if there is evidence that the manner of dismissal caused mental distress. They submitted that the court was barred from awarding aggravated damages in this case because mental distress could not be proven, as Mr. Krmpotic's mental distress claim was dismissed due to

insufficient medical evidence of a psychological condition. However, the court rejected the appellants' argument, clarifying that mental distress is a spectrum. The court note:

"Mental distress is a broad concept. It includes a diagnosable psychological condition arising from the manner of dismissal but is not limited to that. There is a spectrum along which a person can suffer mental distress as a result of the manner of dismissal."

"While the normal distress and hurt feelings resulting from dismissal are not compensable, aggravated damages are available where the employer engages in conduct that is unfair or amounts to bad faith during the dismissal process by being untruthful, misleading, or unduly insensitive, and the employee suffers damages as a consequence." [1]

The absence of a diagnosable psychological condition, which is needed to claim damages for mental distress, does not rule out the possibility of receiving aggravated damages for distress that goes beyond the normal mental distress of a dismissal. If an employer has breached their duty of good faith during the dismissal process, and as a result an employee suffers distress beyond the normal distress from termination, then they may have a viable claim for aggravated damages. Accordingly, the court confirmed that the appellant's bad faith and dishonesty during the termination process contributed to Mr. Krmpotic's mental suffering, resulting in mental distress beyond typical termination-related distress, thus justifying the award of aggravated damages.

**For Employers and Employees to Note:**

Employers are reminded to handle terminations properly or may have created circumstances leading them vulnerable to damages claims.

Further, aggravated damages can be awarded when mental distress exceeds the typical hurt feelings stemming from a dismissal if the employer's conduct during termination is notably unfair or insensitive, even in the absence of a medical diagnosis of a psychological condition.

Employers are well-advised to seek legal advice prior to carrying out terminations. Also, employees are encouraged to obtain legal advice from an experienced employment lawyer to explore, amongst other things, whether there are any valid damages claims arising from a without cause termination.

*Written with the assistance of Summer Student Lexy Mogil*

*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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