

# Here We Go Again: Employers Ordered To Pay \$10,000 In Moral And Punitive Damages For Improper Termination Conduct



Three recent Ontario decisions reinforce the importance of upholding proper termination protocols due to the ever-evolving risk of moral and punitive damage awards against employers.

## ***Lalata***<sup>1</sup>

### **Background**

The employer alleged a 14.5-month service employee resigned, and then that he was dismissed for poor performance, although performance issues had never been addressed. The termination came as a shock to the employee who was the main financial support for his family. The employee remained emotionally impacted for years after termination.

### **The Decision**

In addition to 14 weeks of wrongful dismissal damages, the Court awarded \$10,000 in moral damages due to bad faith during and after termination because the employer:

1. made insensitive comments that the employee had engaged in “poor performance” despite no prior performance issues, and that “he should look for another job as his son needs it”, referencing his autistic son’s costly medical needs<sup>2</sup>;
2. did not pay wages, holiday pay, and vacation pay in accordance with the *Employment Standards Act, 2000* (the “ESA”);
3. did not provide a written termination letter as required under the *ESA*;
4. did not pay termination pay under the *ESA*; and
5. denied that the employee was dismissed and claimed he resigned, even though witness testimony supported dismissal.

## ***Wilds***<sup>3</sup>

### **Background**

The employer dismissed a 52-year-old executive assistant without cause after 4.5 months of service.

## The Decision

The judge determined that the termination clause in the employment agreement violated the *ESA* and was unenforceable, entitling the employee to 2 months of wrongful dismissal damages. The employer's actions also warranted \$10,000 in punitive damages because the employer:

1. repeatedly and flagrantly breached *ESA* minimum requirements, despite that *ESA* compliance was repeatedly flagged to the employer, and the judge found it was "particularly egregious" that the employer attended cross-examination without even knowing if *ESA* minimum entitlements had been paid<sup>4</sup>;
2. issued a Record of Employment about 1 month after termination, which the judge deemed "very late"<sup>5</sup>; and
3. failed to reimburse legitimate business expenses.

The Court determined punitive damages were rationally required to punish the employer and help deter future misconduct, particularly given the vulnerable position of dismissed employees.

Notably, the employee did not provide substantive proof of "mental and financial distress" in support of her claim for moral damages. Otherwise, the Court would have likely also awarded moral damages, on top of the punitive damages.

*Smith*<sup>6</sup>

## Background

The employer dismissed a 51-year-old golf superintendent after 1 month of service mid-season. The employer alleged the termination was with just cause, although it did not ever provide an explanation to the employee at termination, and later alleged the employee was rude to staff and customers. Ultimately, the employer could not prove it had just cause or that the employee engaged in any gross incompetence.

## The Decision

The employee was awarded a disproportionately high 5 months of wrongful dismissal damages, due to his very skilled position and termination mid-season, which would make re-employment in his field very difficult. The employee was also awarded a symbolic \$100 in moral damages, as the employer violated its duty of good faith and fair dealing with respect to dismissal because it:

1. engaged in hardball litigation tactics when it brought a "dubious" counterclaim to the employee's wrongful dismissal claim, making "very serious allegations of impropriety"<sup>7</sup> that the employer did not ever prove;
2. alleged dishonesty that could not be proved against the employee as part of its defence strategy, and specifically that he "lied about his qualifications", which "has serious reputational ramifications"<sup>8</sup>; and
3. alleged the employee's incompetence led to the "irreparable damage to three satellite irrigation systems" as part of its defence strategy, which the judge found was an "absurd position to take" based on the employer's own testimony that it was able to get the irrigation system repaired "almost immediately" after termination.<sup>9</sup>

Despite the above employer failings, the moral damages award was so low because the employee did not provide substantive proof of injury arising from the employer's breach. Otherwise, the moral damages award would have been much higher. No punitive damages were awarded as in the judge's view, the compensable damage award alone

significantly deterred the employer, so that it would abandon hardball litigation tactics for its next termination.

## Takeaways for Employers

*Lalata* reaffirms that Courts are unsympathetic to employers engaging in unfair or bad faith conduct both during and after termination. Such an analysis will centre on whether an employer was untruthful, misleading, or unduly insensitive.<sup>10</sup> When an employee is particularly emotionally impacted by an insensitive termination meeting and provides credible evidence to support their claims, Courts will often recognize the harm caused by an employer.<sup>11</sup>

To avoid moral damages, it is vital employers comply with *ESA* obligations (or any greater contractual obligations) and avoid misrepresenting the reason for dismissal. Although an employer's termination comments may be intended to be harmless, strict protocols and knowing what *not* to say are key.

Although punitive damages are an exceptional remedy, *Wilds* is an example that underscores the importance of abiding by *ESA* obligations and promptly correcting any errors.

As such, employers should ensure that managers, human resources, and payroll are well-trained on the process of dismissing employees and best practices. This should involve a review of company policies on how to handle terminations to ensure that the company is not unknowingly engaging in practices that would draw the ire of a court or tribunal.

Finally, when defending wrongful dismissal actions, employers are permitted to be vigorous in their defence, particularly when just cause was substantiated and communicated at termination. However, as demonstrated in *Smith*, it is crucial employers do not go overboard with allegations of impropriety against employees that they ultimately cannot prove.

## Footnotes

1 [Lalata v 1130460 Ontario Inc. o/a Carstar Downsview](#), 2024 CanLII 57826 (ON SCSM) [*Lalata*].

2 *Ibid* at [para 25](#).

3 [Wilds v 1959612 Ontario Inc.](#), 2024 ONSC 3452 (CanLII) [*Wilds*].

4 *Ibid* at [paras 122-123](#).

5 *Ibid* at [para 122](#).

6 [Smith v Lyndebrook Golf Inc.](#), 2024 CanLII 103671 (ON SCSM) [*Smith*].

7 *Ibid* at [para 77](#).

8 *Ibid* at [paras 78-79](#).

9 *Ibid* at [para 81](#).

10 [Honda Canada Inc. v Keays](#), 2008 SCC 39 (CanLII) at [paras 57-59](#).

11 In a previous [bulletin](#), we highlighted a \$15,000 in moral damages award, and in another previous [bulletin](#) a \$55,000 punitive and moral damages award for inappropriate termination conduct, including *ESA* violations, showing how much damages can vary depending on the severity of an employer's misconduct.

*The foregoing provides only an overview and does not constitute legal advice. Readers*

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