

Ontario Court Of Appeal Confirms Duty To Provide Honest Reasons For Termination



In *Krmpotic v. Thunder Bay Electronics Limited*,^[1] (Krmpotic) the Ontario Court of Appeal recently elaborated on the longstanding theory that employers owe a duty of honest performance upon termination by demonstrating that substantial repercussions may result from breaching it. Specifically, the Court cemented the notion that employers have a duty to be “candid, reasonable, honest, and forthright” when dismissing employees. If they fail to meet these standards, an employee may be entitled to aggravated damages.

In *Krmpotic*, the appellant company terminated the respondent employee without cause after almost 30 years of employment. The respondent, who had just returned from medical leave after undergoing surgery, was called into a termination meeting the day of his return.

The Court upheld the trial judge’s finding that the respondent was entitled to \$50,000 in aggravated damages in addition to the notice period of 24 months that was provided. As was confirmed in *Boucher v. Wal-Mart Canada Corp.*,^[2] aggravated damages are available to compensate employees for “additional harm suffered” when an employer engages in conduct that amounts to bad faith. During the termination process, this can occur if (a) the employer behaves in a way that is “untruthful, misleading, or unduly insensitive” enough to amount to a breach of their duty of honest performance (b) the employee consequently suffers harm “beyond the normal distress and hurt feelings that result from dismissal”.

The employer’s conduct

The Court in *Krmpotic* found that the company had breached its duty of good faith by virtue of its conduct during the respondent’s termination.

Firstly, the company claimed that the employee’s dismissal was for “financial reasons”, but failed to provide evidence of this. The trial judge found, and the appellate court confirmed, that the true reason for the termination was the employee’s physical limitations. Although the company had not been directly untruthful, it was established that it had failed to be candid and forthright during the termination meeting, based on the discrepancy between their stated reason and what the Court found to be their actual reason for termination. As the Court put it, the termination had occurred in a way that was “the antithesis of an employer’s duty to be candid, reasonable, honest and forthright and to refrain from engaging in

conduct that is unfair or in bad faith by being untruthful, misleading, or unduly insensitive.”

Damages suffered by the employee

The respondent did not provide medical or psychological evidence to show that the company’s conduct during his termination resulted in mental distress. The company contended that, as per *Honda Canda Inc. v. Keays*,^[3] aggravated damages should only be awarded where there is evidence of both mental distress and a causal relationship between the manner of dismissal and that mental distress. However, the appellate court found that this submission reflected an “unduly narrow view of the employer’s duty of good faith during the termination process and the meaning of mental distress in that context.” Further, the respondent claimed to have experienced “anxiety, depression, fear, poor sleep, frustration, and helplessness” as a result of being terminated, which was confirmed by two of the respondent’s family members. According to the trial judge and the appellate court, these symptoms amounted to “harm beyond the normal distress and hurt feelings resulting from dismissal”.

The decision in *Krmpotic* affirms and extends the current interpretation of an employer’s duty to act in good faith throughout the process of terminating an employee. The ruling emphasizes that employers should avoid being “untruthful, misleading or unduly insensitive” when dismissing employees.

Notably, the Court clarified that a finding of bad faith on the part of the employer does not necessitate explicit dishonesty in the reason for termination – a lack of candor or directness can suffice, and the circumstances of the termination can be used to establish this. Secondly, the Court recognized that employees who suffer mental distress because of how they were terminated may have grounds to seek aggravated damages, even without medical or psychological evidence.

Footnotes

1 [2024 ONCA 332](#).

2 [2014 ONCA 419](#).

3 [2008 SCC 39](#).

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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