

Recent Rulings Mean Terminated Employees May Not Need Proof Of Distress For Damages Claims



Our employer clients often express frustration at the state of [employment law](#). When it comes to terminating employees, the courts and legislators force employers to jump through hoops to avoid costly lawsuits. The recent decision by the [Ontario Court of Appeal](#) in [Krmpotic v Thunder Bay Electronics Limited](#), only adds to the frustration of Ontario employers as the Court upheld a \$50,000 aggravated (i.e., mental distress) award without a shred of expert medical or psychological evidence.

On the flip side, we often see employee clients who want to seek damages for the mental distress they experienced during and after termination. We typically advise that, while we understand losing your job is difficult and stressful, there are only limited circumstances where courts will compensate for the way an employee was fired and its mental and emotional impact.

However, this recent decision from the Court of Appeal seems to lower the threshold for aggravated/mental distress damages and should serve as a warning to employers to be particularly mindful of the manner in which they terminate. If they're not careful, they could be on the hook for aggravated damages for mental distress even if employees do not have medical or psychological proof of the distress they suffered.

Until now, the courts would only award aggravated damages in instances where an employer's actions during and following termination were particularly unfair or in bad faith and the employee had medical evidence to show that these actions resulted in mental distress. For example, in the case of [Boucher v. Wal-Mart Canada Corp., 2014 ONCA 419](#), Wal-Mart Inc. was ordered to pay \$200,000 in aggravated damages, among other things, after firing an employee, Meredith Boucher, who was regularly abused and humiliated by her supervisor in front of colleagues and customers because she refused to follow his request to falsify temperature logs. She reported these instances to management, who refused to take any action. The incidents understandably caused Ms. Boucher to suffer extraordinary mental distress. Unlike the plaintiff in the Thunder Bay Electronics case, Ms. Boucher produced an abundance of medical evidence such as notes from her doctor and psychiatrist to prove her mental distress.

In the past, courts would only award aggravated damages if the departed employee could prove they had suffered above and beyond the normal mental distress and hurt feelings terminated employees invariably experience. It was not enough to show that

the employer acted unfairly or in bad faith. The employee needed provable evidence of mental distress caused by the employer's actions.

In the Thunder Bay Electronics case, the Court of Appeal placed little emphasis on proving the mental distress and focused almost exclusively on the employer's conduct during termination. The Court upheld the trial judge's \$50,000 award for aggravated damages due to the manner of the dismissal, noting Thunder Bay Electronics' decision to fire the employee, Mr. Krmpotic, shortly after his return from disability leave, and its dishonesty and insensitivity during the termination meeting.

The employer argued that Mr. Krmpotic had not provided any evidence of mental distress beyond the normal expected, and should therefore not be entitled to aggravated damages. The Court of Appeal rejected this argument, relying solely on the fact that the employer's actions were harmful. The Court was not concerned with the fact that "Mr. Krmpotic had not established, through medical evidence, that he had suffered a diagnosable psychological injury," and stated this "was not the end of a consideration of the issue of mental distress damages." In other words, the Court seemed to be doing away with the requirement for departed employees to show evidence of mental distress and awarding aggravated damages simply on the basis of egregious misconduct by the employer.

This decision therefore trivializes the threshold for aggravated damages awards by placing the focus almost entirely on the employer's actions rather than the actual mental harm suffered by the terminated employee. Regardless of whether an employee has evidence of mental distress, employers who act unreasonably during or after a termination could open themselves up to additional liability.

Now more than ever, employers should be extra cautious when terminating employees, and consult an employment lawyer prior to terminations to ensure they don't add fuel to a combustible situation.

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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