

EMPLOYER'S DISTURBING TERMINATION CONDUCT RESULTS IN \$15,000 MORAL DAMAGES AWARD

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Yet another decision reminds employers about proper conduct when dismissing employees. In *Teljeur v Aurora Hotel Group*, [2023 ONSC 1324](#), the court awarded \$15,000 in moral damages for an employer's breach of its obligations of good faith and fair dealing in the manner of dismissal.

The Facts

The employer dismissed a 56-year-old employee without cause after just over three years in a senior management role. The employee surreptitiously recorded the termination meeting, which was used as evidence considered by the summary judgment motion judge in the award of moral damages.

Analysis

In addition to an award of seven months' pay in lieu of reasonable notice, the court held that the employer acted in a manner that was "untruthful, misleading or unduly insensitive" due to the following "disturbing aspects" of the plaintiff's termination:

1. The employer failed to give the employee written notice of termination after the employee specifically asked on at least three occasions for something "in writing". This is contrary to section 54 of the *Employment Standards Act, 2000* (the "ESA"), which requires employers to give dismissed employees with more than three months of service written notice of termination.
2. The employer failed to deliver the employee's ESA entitlements within seven days of the day employment ended or the employee's next regular payday, contrary to section 11(5) of the ESA. The employer's significant delay in issuing a cheque to the employee meant that he had to go through the holiday season without any financial support from his employer.
3. It failed to reimburse the employee \$16,680 for his incurred business expenses, representing about 23% of his annual income. This was a very significant financial burden for the employee to carry. In the termination meeting, the employer indicated he would be paid out "before the next week or so", but failed to do so even to the date of the summary judgment motion, almost a year later.
4. In the termination meeting, the employer assured the employee he would receive eight weeks of

severance or additional pay, but instead limited the amount paid to his ESA entitlement.

5. Also in the termination meeting, the employer encouraged the employee to resign from his employment, indicating “it is better off for you to do it”. The court considered the possibility that this was intended to limit the employer’s exposure in a wrongful dismissal claim.

Key Takeaways for Employers

With the right facts and evidence, including an employee’s recording from a termination meeting, courts will be prepared to award moral damages to denounce an employer’s bad faith conduct. We [previously wrote](#) about a similar decision, *Pohl v Hudson’s Bay Company*, 2022 ONSC 5230, where an employee received a much higher award of \$55,000 in moral and punitive damages for the employer’s conduct during and after the termination.

To avoid moral damage awards, employers must fulfil all of their statutory (and any additional contractual) obligations, as well as ensure that they are honest to employees and follow through on their promises. Even what may seem like individual insignificant missteps will be scrutinized and assessed collectively, with particular regard for an employee’s vulnerability and unnecessary mental distress at termination.

As we have previously advised, employers should ensure that managers, human resources and payroll are well-trained on the process of dismissing employees and best practices, particularly in cases where misconduct is not alleged. 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.

This decision also serves as an important reminder that an employee’s recording of a conversation – such as their termination meeting – will be admissible as evidence, even when surreptitiously recorded without the employer’s knowledge. Employers should ensure that their managers and human resource professionals are aware of this possibility and conduct themselves accordingly.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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