

Employer Loses Appeal to Reduce \$60,000 Moral Damages Award

Earlier this year, the Court of Appeal for Ontario upheld a significant award against an employer for moral damages in relation to the treatment of an employee surrounding her dismissal.

The case is *Doyle v. Zochem Inc.* and it involved the termination of a female plant supervisor with 9 years of service. The plaintiff, Doyle, had complained of sexual harassment committed by a male co-worker who the employer considered a key employee. She was fired shortly thereafter.

The trial judge found multiple instances of mistreatment by the employer including: leading Doyle on that her job was safe when the decision had been made to terminate her, pressuring her to sign a release immediately at the time of termination, inferring that she should abandon her claim of sexual harassment due to the potential harm to the male employee's reputation and attempting to use other employees to "dig up dirt" on her. These issues (among others) were the foundation of the award of moral damages. In employment cases, moral damages can be awarded for breaches of the employer's implied contractual obligation of good faith in the manner of dismissal which cause mental distress. In this case, the Court of Appeal noted that conduct before and after the dismissal can also be considered in awarding these damages, so long as the conduct is a component of the manner of dismissal.

The trial judge awarded the plaintiff ten (10) months' salary, \$25,000 in damages under the *Human Rights Code* for the sexual harassment and an additional \$60,000 in moral damages. The employer appealed the award of moral damages.

A three-judge panel of the Court of Appeal unanimously upheld the \$60,000 award and ordered the employer to pay more than \$40,000 to Doyle in legal costs relating to the appeal.

This case makes clear that improper handling of terminations can end up costing an employer significant amounts of money.

If your business has any questions about how to properly handle a termination, please do not hesitate to contact Bergs Law.

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