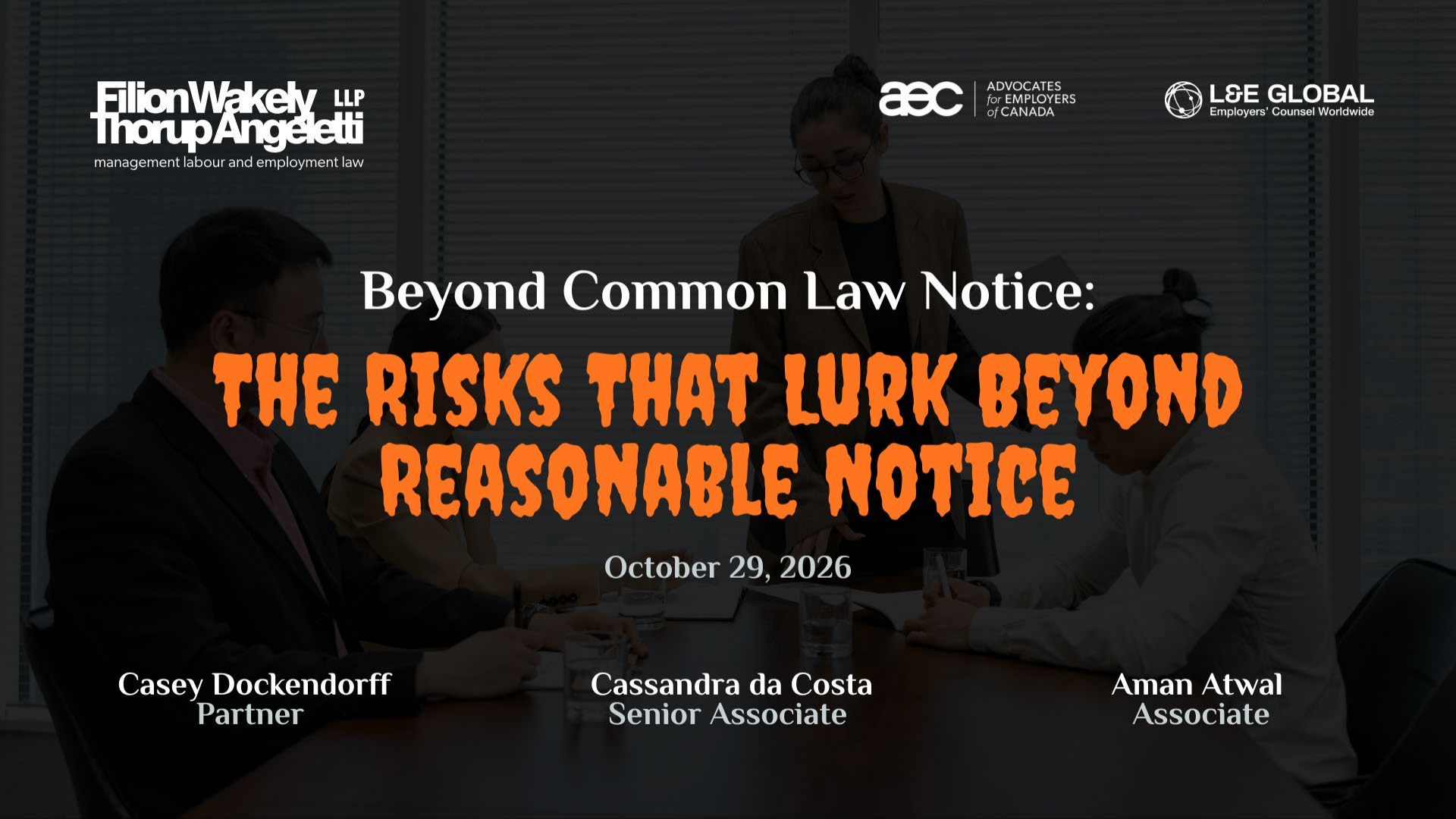

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Beyond Common Law Notice:

THE RISKS THAT LURK BEYOND REASONABLE NOTICE

October 29, 2026

Casey Dockendorff
Partner

Cassandra da Costa
Senior Associate

Aman Atwal
Associate

WARNING:

The following events are based on true stories.

Employer discretion is advised.

Agenda

1. Aggravated Damages: When Bad Faith Comes Back to Haunt You
2. Punitive Damages: When Employer Conduct Crosses the Line
3. Human Rights Damages: Discrimination and Termination
4. Reprisal and Retaliation: When Things Go from Bad to Worse
5. Best Practices: Keeping Termination Pitfalls at Bay
6. Q&A: No Tricks, Just Questions


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AGGRAVATED DAMAGES



What Are Aggravated Damages?

- Extraordinary compensatory damages
- Often referred to as “moral damages”
- Not to be confused with punitive damages!
- Awarded when an employee experiences mental distress or other intangible effects from an employer’s breach of good faith during a dismissal

Test for Establishing Aggravated Damages

Employee must prove that:

- The employer breached its duty of good faith in the course of dismissal
- The employer's breach caused the employee to experience:
  - Mental distress; or
  - Some other "intangible effect"

Breach of the Duty of Good Faith

Requires Employers to Be…	Must Refrain from Conduct that Is…
Candid	Unfair
Reasonable	Untruthful
Honest	Misleading
Forthright	Unduly insensitive

Examples of Breaches of the Duty of Good Faith

Pre-Termination Conduct	Post-Termination Conduct
• Dismissing an employee upon their return from a disability-related leave • Dismissing an employee in order to deprive them of a benefit • Attacking an employee's reputation • Misrepresenting the reason for an employee's dismissal • Laying off an employee due to a lack of work, while simultaneously advertising for their replacement	• Failing to pay an employee's statutory entitlements • Refusing to pay an employee's statutory entitlements unless the employee has executed a release • Refusing to pay an employee's statutory entitlements until ordered to do so • Refusing to provide a letter of recommendation

Aggravated Damages and Mental Distress

- Damages do not automatically flow from bad faith conduct
  - There has to be a causal link between the employer's breach and the employee's mental distress
- Distress must be **serious, prolonged,** and **greater than the normal distress and hurt feelings that result from dismissal**
  - However, a diagnosed mental illness is not required

Aggravated Damages and Intangible Effects

- "Intangible effects" includes injuries such as:
  - Distress
  - Humiliation
  - Hurt feelings
  - Embarrassment
  - Low self-esteem

Krmpotic v. Thunder Bay Electronics Limited, 2024 ONCA 332

Facts:

- 50-year-old carpenter with almost 30 years of service
- Was on medical leave recovering from back surgery which was required due to numerous workplace injuries
- Returned to work and hours later he was called into a meeting, and his employment was terminated without cause or notice

Krmpotic v. Thunder Bay Electronics Limited, 2024 ONCA 332

Award: $50,000 for “aggravated/moral damages” (sought $100,000)

Why?

- Employer terminated the employee in a manner that was “untruthful, misleading, and unduly insensitive” and “the antithesis of an employer’s duty”
- Employee suffered harm “beyond the normal distress and hurt feelings resulting from dismissal”

Mental distress need not be a diagnosable condition

[34] Mental distress is a broad concept. It includes a diagnosable psychological condition arising from the manner of dismissal but is not limited to that. There is a spectrum along which a person can suffer mental distress as a result of the manner of dismissal. At one end is the person who suffers the normal distress and hurt feelings resulting from dismissal, which are not compensable in damages. At the other end of the spectrum is the person who suffers from a diagnosable psychological condition as a result of the manner of dismissal. In between those two end points, there is a spectrum along which the manner of dismissal has caused mental distress that does not reach the level of a diagnosable psychological injury.

Koshman v. Controlex Corporation, 2023 ONSC 7045

Facts:

- A 69-year-old Vice President, was summarily dismissed after 18.5 years of service via a couriered letter
- After the company's previous owner died suddenly, the owner's wife became the new owner.
- Over 8 weeks, the new owner unilaterally ostracized the employee from his management duties before terminating his employment

Award: $50,000 in aggravated damages (sought damages were not listed)

Why?

- unilaterally ostracizing him from his management duties;
- terminating him via an impersonal letter;
- offering employee's job to his subordinate prior to his termination;
- telling employee's clients to not deal with him and that he had been terminated;
- making disparaging remarks about employee's character and honesty to clients;
- suggesting to clients that her deceased husband had been murdered and that the employee was involved;
- refusing to pay the employee's vacation pay;
- retained and subsequently abandon her relationship with four different law firms across proceedings;
- claiming groundless breach of fiduciary duty accusations during the proceedings; and
- ultimately abandoning the respondent company's defence by failing to attend trial.

Wilsher v. Olympic Wholesale, 2026 ONSC 3620

Facts:

- A 55-year-old Night Shift Supervisor who worked for over 17 years until he was terminated for cause, without notice or pay in lieu of notice
- Employer claimed just cause for “fraudulent activity and time theft”
- Employer accused him of time theft for “topping up” his coworkers’ hours.

Wilsher v. Olympic Wholesale, 2026 ONSC 3620

Award: No “official” award of aggravated damages. Rather, awarded an extended notice period.

Why?

- Investigation targeted the employee without determining the nature and extent of the “topping up” practice;
- Employer did not interview other supervisors;
- Employee’s ‘interview’ for investigation was more like an interrogation, and was without notice, due process, or union representation;
- Termination letter accused employee of “fraudulent behaviour” and “time theft”;
- Employee’s ROE recorded “dismissal/suspension” which prevented him from obtaining unemployment benefits;
- Employee was not provided with any references.

Long-standing Practices and Apologies

[116] With respect to the defendant's argument that Willsher breached his fiduciary duty to Olympic by failing to disclose the impugned "topping up" practice […] in the present case there was no credible evidence that Willsher knew that the "topping up" practice was a "wrongdoing committed" against the company. Willsher inputted all timesheet edits into the time management system using his own credentials. The edits were submitted weekly to various members of Olympic's accounting staff and were always available for review by Peroff and Sousa. **Willsher never attempted to disguise his actions and understood that "topping up" was the usual and ordinary practice of all Night Shift Supervisors that and was in done to align with the employees' union contract**. Any alleged "apology" provided to [management] cannot be interpreted to be an expression of guilt or moral blameworthiness for the reasons I set out earlier.

[Emphasis added]

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PUNITIVE DAMAGES

What are punitive damages?

- Punitive damages are designed to punish a defendant.
- The courts only award punitive damages in rare circumstances where the defendant's conduct has been so malicious and high-handed that it offends the court's sense of decency.
- An award of punitive damages has three objectives: retribution, deterrence, and denunciation.

Three Basic Requirements for Punitive Damages

The employee must show that:

1. the employer's conduct was reprehensible—malicious, oppressive, high-handed, or a marked departure from ordinary standards of decency;
2. punitive damages, in addition to compensation, are necessary for retribution, deterrence, and denunciation
3. the employer committed an actionable wrong independent of the breach-of-contract claim.

Examples

- The employer uses “hardball” tactics to gain negotiating leverage over the dismissed employee, such as withholding amounts owed or fabricating allegations of serious misconduct to justify the dismissal;
- The employer conducts a bad-faith performance appraisal that damages the employee’s professional reputation;
- The employer dismisses the employee for cause based on allegations of serious misconduct, including criminal or quasi-criminal conduct, without a reasonably fair and impartial investigation;
- The employer carries out the dismissal in a manner intended to disparage the employee among colleagues or prospective employers; and
- The employer engages in misconduct during litigation.

Wilds v. 1959612 Ontario Inc., 2024 ONSC 3452

Facts:

- A 52-year-old Executive Assistant, was terminated by letter without cause or notice
- Employer did not pay employee's statutory minimum entitlements after termination, including termination pay and vacation pay; or her contractual entitlement to unpaid wages for an unearned bonus; or her submitted 407 highway expenses
- Employer issued the employee's ROE one month late, delaying her ability to seek employment insurance benefits

Wilds v. 1959612 Ontario Inc., 2024 ONSC 3452

Award: $10,000 ($25,000 sought in combined aggravated, mental distress, moral and/or punitive damages)

Why Damages Were Awarded:

- “Flagrant breaches” of employment standards, including failure to pay entitlements during the proceedings.
- At cross-examination, the employer’s affiant could not confirm whether entitlements had been paid and continued to cite a “clerical error.”

Chalmers v. Airways Transit Service Ltd. and Badder Capital Group Ltd., 2023 ONSC 5725

Facts:

- 53-year-old Vice President, was laid off, along with other employees, in March 2020 due to the COVID-19 pandemic
- By June 2020, the entire management team had been recalled to work except for the employee.
- From June to December 2020, over 50 employees had been recalled

Award: $30,000 in punitive damages (sought $200,000 in combined aggravated, moral and/or punitive damages)

Chalmers v. Airways Transit Service Ltd. and Badder Capital Group Ltd., 2023 ONSC 5725

Why Damages Were Awarded:

- Employer did not satisfy its duty of good faith:
  - when initially laid off, the employee was asked to work without pay;
  - during his lay off, the employee was asked questions regarding work operations, procedures, contacts, and passwords;
  - employer recalled several managers but not the employee;
  - employer refused to pay the employee's outstanding vacation pay;
  - employer refused to contribute to the employee's RRSP plan;
  - employer did not respond to the employee's inquiries to return to work; and
  - employer did not provide the employee with a reference letter.

Koshman v. Controlex Corporation, 2023 ONSC 7045

Award: $50,000 in punitive damages

Why Damages Were Awarded:

- The new owner:
  - launched a baseless counterclaim without evidence;
  - sought repayment of eight weeks severance paid out to the employee;
  - caused the defendant employer to default on a court order to appoint new counsel;
  - caused the defendant employer to abandon its defence in this proceeding; and
  - chose not to attend the trial without communicating to the court or counsel.


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HUMAN RIGHTS DAMAGES

What are human rights damages?

- General damages are intended to financially compensate an applicant for injury to their dignity, feelings, and self-respect as a result of the discrimination or harassment.

- They are intended to compensate for the breach of the Human Rights Code and for the personal impact that breach has on an applicant.

The Criteria

- Two criteria are generally applied – 1) the objective seriousness of the conduct and 2) the personal effect on the applicant who experienced the discrimination.

- The first factor recognizes that injury to dignity, feelings, and self-respect is generally more serious depending, objectively, upon what occurred.

- The second criterion recognizes an applicant's particular experience in response to the discrimination or harassment.

Relevant Factors for the Second Consideration

- humiliation experienced;
- hurt feelings experienced;
- loss of self-respect;
- loss of dignity;
- loss of self-esteem;
- loss of confidence;
- experience of victimization;
- vulnerability of the applicant; and
- the seriousness, frequency and duration of the offensive treatment.

L.N. v. Ray Daniel Salon & Spa, 2024 HRTO 179

Facts:

- The applicant, a newcomer to Canada in her mid-20s, worked as an esthetician for the respondent.
- The personal respondent paid her $5.00/hr, below minimum wage
- Across two months, the personal respondent sexually harassed and sexually assaulted her at work. He sexually assaulted her four times, including two incidents of rape
- When the applicant refused his sexual advances or asked to be paid minimum wage, the personal respondent threatened to kill her, to call the police, and to have her deported

L.N. v. Ray Daniel Salon & Spa, 2024 HRTO 179

Award: $180,000, inclusive of human rights and reprisal damages (sought $250,000 in human rights and reprisal damages)

Why Damages Were Awarded:

- The applicant suffered a poisoned work environment due to discrimination on the basis of sex and citizenship
- The respondent paid the applicant below minimum wage and lied to her that $5.00 was a “customary” starting wage in Canada
- The Tribunal focused on the intersectionality of the discrimination and reprisal: “there was intersectionality to these breaches, and I find it most appropriate to view the remedy as one that addresses them in combination”

Aloy-Sadakane v. Data & Scientific Inc., 2024 HRTO 770

Facts:

- The applicant was a 27-year-old Office Manager
- The personal respondent was accused of the following:
  - asking if the applicant was a “homosexual”;
  - hugging and touching the applicant on her shoulders, face, stomach, thighs, and buttocks, saying he should be able to touch her whenever he wanted;
  - telling the applicant he needed “someone to bang”;
  - telling the applicant she “played 5 parts in his life: his wife, his lover, his daughter, his employee, and his friend”;
  - calling the applicant a “dirty pig” and his “missus”; and
  - asking the applicant what she would do if he touched her “front” and asking again after he was told she would contact the police.

Aloy-Sadakane v. Data & Scientific Inc., 2024 HRTO 770

Award: $50,000 in general damages

Why Damages Were Awarded:

- Employer's comments were persistent but occurred within a short period of time
- Employee testified that she was a vulnerable worker at her young age and objected to the employer's sexual comments, requests to engage, and physical touching
- Employee testified that the circumstances had an immediate, long-term impact on her emotional and physical health (e.g., affecting her sleep, suffering panic attacks, being afraid of men, seeing a psychologist to help assess and ease her symptoms)

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REPRISAL OR RETALIATION DAMAGES

What are reprisal or retaliation damages?

- Financial compensation awarded to an employee or individual who is punished, demoted, terminated, or subjected to negative treatment by an employer or authority figure for exercising a legally protected right

Vanessa Braganza v Randstad Canada, 2026 CanLII 46836 (ON LRB)

Facts:

- Employee was an Operations Manager who alleged that she was reprised against for filing a workplace harassment complaint.
- Employee went on a 5-month medical leave after filing her complaint.
- Months after, her employment was terminated for “organizational restructuring”.

Vanessa Braganza v Randstad Canada, 2026 CanLII 46836 (ON LRB)

- In reprisal claims, there are three heads of compensation under consideration:
  - compensation for direct wage loss;
  - compensation for loss of reasonable expectation of continued employment; and
  - compensation for emotional pain and suffering.

Vanessa Braganza v Randstad Canada, 2026 CanLII 46836 (ON LRB)

- The Employer argued against reprisal or retaliation damages on the following grounds:
  - Failure to mitigate
  - Alleged delay in filing and in conduct of litigation
  - Causation

Vanessa Braganza v Randstad Canada, 2026 CanLII 46836 (ON LRB)

Award: $1,500 for loss of dignity and mental distress and $194,333.26 in direct income loss, representing 22 months' pay

Why Damages Were Awarded:

- Award for loss of dignity and mental distress because the hearing undermined the employee's dignity and professional standing as she re-lived her termination
- Award for direct income loss because the Board found that she would have remained in her position for 22 months

L.N. v. Ray Daniel Salon & Spa, 2024 HRTO 179

The test under the *Code* for reprisal:

- Firstly, an action must be taken against, or a threat made, to the complainant;
- Secondly, the alleged action or threat is related to the complainant having claimed or attempted to enforce a right under the *Code*; and
- There must be an intention on the part of the respondent to retaliate for the claim or an attempt to enforce the right.

L.N. v. Ray Daniel Salon & Spa, 2024 HRTO 179

Award: $180,000, inclusive of human rights and reprisal damages (sought $250,000 in human rights and reprisal damages).

Why Damages Were Awarded:

- Respondent reprised against the applicant by "preying" on her vulnerability as a newcomer to Canada with precarious immigration status.
- Respondent reprised against the applicant by commencing a "retaliatory" Small Claims Court claim alleging the applicant damaged his personal and business reputation.
- Respondent reprised against the applicant by reaching out to the applicant's witness in Iran to "thwart the applicant's case" by asking the witness for a letter of support.

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BEST PRACTICES

Best Practices for Conducting Employment Terminations

- ✓ Pay all statutory and contractual entitlements promptly
- ✓ Communicate termination decisions honestly, respectfully, and sensitively
- ✓ Investigate fairly before alleging cause
- ✓ Prevent and address discrimination and harassment promptly
- ✓ Separate protected complaints, leaves, and other protected activity from discipline or termination decision
- ✓ Avoid retaliation and “hardball” tactics

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