

Employer on the Hook for \$60K in Moral Damages

The Ontario Court of Appeal, in *Doyle v. Zochem Inc.*, recently upheld a significant moral damages award of \$60,000 that a lower court granted to an employee for the manner in which she had been dismissed after she made a complaint of sexual harassment.

Moral damages may be awarded in addition to reasonable notice in cases where a court finds the conduct of an employer in terminating an employee particularly offensive, unfair or unduly insensitive. Moral damages do not arise from an employee's actual termination, but rather from the circumstances and behaviour surrounding the termination.

In this case, Ms. Doyle, the plant supervisor, and notably the only woman at the plant, filed a complaint of sexual harassment against her manager. In response, the employer failed to adequately investigate the complaint. Ms. Doyle was then told by management that she was no longer needed and that she had acted irresponsibly and compromised the reputation of her manager by claiming sexual harassment.

As a result of the termination, Ms. Doyle's doctor diagnosed her with having major depressive disorder and anxiety.

The trial judge found that the reason for Ms. Doyle's termination was her gender and the sexual harassment complaint she had filed, and awarded her general damages equal to ten (10) months of salary, \$25,000 for sexual harassment and \$60,000 in moral damages.

The employer appealed the moral damages award, and argued that \$20,000 would have been more appropriate in the circumstances.

On appeal, the Court affirmed the \$60,000 moral damages award, stating that *"...the termination was cold and brusque (and) there is evidence of untruthful, misleading and unduly insensitive conduct"*. The



Court noted that the response of the manager to the sexual harassment complaint was *"insensitive to the point of verging on cruel."*

This case demonstrates that employers must act fairly and in good faith in dismissing an employee – or pay the price. There is no reason to be insensitive to an employee at the time of termination. Doing so will only open up the employer to unnecessary, and expensive, legal liability.

If you have any questions about this particular case or terminations of any kind, please do not hesitate to contact an e2r® Advisor.

