

**ONTARIO COURT OF APPEAL AWARDS DAMAGES FOR TORT OF INTENTIONAL
INFLICTION OF MENTAL SUFFERING IN WRONGFUL DISMISSAL ACTION**

Prinzo v. Baycrest Centre for Geriatric Care (2002), 60 O.R. (3d) 474 (O.C.A.)

Prinzo was employed by Baycrest Centre for Geriatric Care as the manager of a beauty shop for 17 years. Late in 1997, Prinzo was given notice by way of letter that her employment would be terminated pursuant to a decision to eliminate her position "at a date to be determined over the next few weeks". One week earlier, Prinzo had sustained an injury and remained off work for approximately two and one half months. Over the course of Prinzo's absence, the Employer contacted her on numerous occasions, insisting that she return to work. After her return to work, Prinzo was advised in writing on March 11, 1998, that her employment would be terminated as of March 31, 1998.

The Court of Appeal found that the Employer had not given effective notice of termination until the letter of March 11, 1998 since the November 1997 letter was neither clear nor unequivocal, and failed to set out a certain date upon which Prinzo's position was to be eliminated.

With respect to reasonable notice, the Court of Appeal found the trial judge had improperly considered the reason for the elimination of Prinzo's position and had failed to take into account that Prinzo knew her employment would end well in advance of March 11, 1998. On this basis, the Court reduced the appropriate notice period from eighteen to twelve months.

The Court of Appeal concluded that damages could be awarded for mental distress in the employment context if the employer's actions amounted to an independent actionable wrong. The Court found that Baycrest's conduct in harassing Prinzo while she was absent due to her injury constituted such a wrong and accordingly upheld the trial judge's \$15,000 award for mental distress. It is noteworthy that the Court of Appeal did not award the damages under the heading of "aggravated damages" as the trial judge had done. The Court of Appeal ruled that aggravated damages are to be awarded for employer conduct *arising from* the dismissal. As the \$15,000 was awarded for Baycrest's conduct *prior* to the dismissal, the Court of Appeal preferred to characterize the damages as an award for the tort of intentional infliction of mental suffering.

The Court commented that if it not found Baycrest's actions to constitute an independent actionable wrong, Prinzo would have been entitled to an extended notice period based on Baycrest's breach of duty to act in good faith and fair dealing.

The Court of Appeal overturned the award of punitive damages finding the conduct had been compensated by the award for mental suffering. In addition, the Court overturned the trial judge's award of solicitor-and-client costs, stating that such an award is to be reserved for the rare situation where a party engages in "outrageous" conduct during a proceeding.