

## YOUR MOTHER WAS RIGHT – POLITENESS PAYS

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A word of warning to employers: you can fire your employees, but you had better treat them nicely on the way out.

Many employees have tried to collect damages for mental distress from their termination, but with few successes. This still seems to be the rule, but the Supreme Court of Canada has issued a strong caveat. The Court has decided that if a dismissed employee can show that the employer caused him or her to feel humiliated or embarrassed as a result of the manner in which he or she was dismissed, the employer will have to pay significantly more damages.

The case involved an employee named Mr. Wallace. In 1972, Mr. Wallace decided to leave his employer of 25 years to join a competing business, Public Press. Mr. Wallace was 45 when he decided to make this change and was understandably worried about security at his new job. Before Mr. Wallace left his position, he was assured by Public Press that as long as he performed well he could expect to continue to work for the company until he reached retirement.

Those assurances were enough for Mr. Wallace and he started working for Public Press. In 1986, he had worked for the business for 14 years and had been the top salesman each year. Just before Mr. Wallace turned 60, however, he was suddenly fired. Public Press decided to play “hard ball” with Mr. Wallace and claimed it had good reasons for firing him. This turned out to be not true. The sudden dismissal, and the claims by the employer that his performance wasn't satisfactory, were very hard to take for Mr. Wallace. On top of this, he had received compliments on his job performance from his supervisors just days before his dismissal. Mr. Wallace found it necessary to seek psychiatric help and he wasn't able to find a new job.

In a strongly worded decision, the Supreme Court warned that courts will require employers to dismiss their employees in a manner that is candid, reasonable, honest and forthright. They will also have to refrain from any conduct that is unfair or in bad faith. “Bad faith” is one of those phrases which can have many meanings. In this case, the Court said it means being untruthful, misleading or unduly insensitive.

There have been a number of cases decided by courts across Canada since the Supreme Court's decision in *Wallace*. The effect on judgments is significant. Where a court has found that the employer treated a dismissed employee unfairly or with undue insensitivity, the damage awards can be approximately 1/3 more than they would have been if the employer had treated the dismissed employee fairly. When you consider that an employee in Mr. Wallace's position could easily be entitled to a year or more of notice/salary, the difference is substantial.

Courts may find the employer acted unfairly in the following circumstances:

1. The employer tells the employee it has a good reason for dismissing him when it really doesn't;
2. The employer abruptly ends the employment of a long term employee without any warning;
3. The employer refuses to give an employee the reasons why he or she was terminated, especially in circumstances where the employer maintains it had a good reason for dismissing the employee;

4. The employer makes it difficult for the employee to find new employment. This would include things like refusing to supply a reference or assistance in finding a new job, or interim continuation of salary where the employer doesn't have good reason to dismiss the employee; or
5. The employer withholds the employee's severance pay until the employee signs a release.

Some employers may feel that the Courts are imposing an overly onerous obligation on them. To this, the Supreme Court of Canada replies: “[We] fail to see how it can be onerous to treat people fairly, reasonably and decently at a time of trauma and despair.”

One of the most surprising things about the Supreme Court's decision is how quickly it has been picked up and applied by courts across the country. Wallace doesn't necessarily legislate “politeness” when terminating employees, but it does signal that civility may have an economic benefit.

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