CITATION: Teljeur v. Aurora Hotel Group, 2023 ONSC 1324
LINDSAY COURT FILE NO.: CV-22-00000024
DATE: 20230223

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
JOHN TELJEUR Plaintiff	Jessica Nolan, for the Plaintiff
– and –	
AURORA HOTEL GROUP; 2476563 ONTARIO INC. operating as PINESTONE RESORT & CONFERENCE CENTRE; and 9407472 CANADA INC. Defendants	Michael Gayed, for the Defendants
	HEARD: October 27 and November 1, 2022

REASONS FOR DECISION

MCKELVEY J.:

Introduction

[1] On December 6, 2021, the plaintiff was working as the General Manager of the Pinestone Resort & Conference Centre ("the Pinestone Resort"), which is operated by the defendants. The Pinestone Resort operates as a full service resort and golf course in Haliburton, Ontario. On December 6th, two senior executives of the Pinestone Resort met with the plaintiff and advised him that his employment was being terminated. No cause is being alleged for the termination. The reason given by the employer is that the Pinestone Resort elected to retain an outside management company to manage the resort.

[2] The plaintiff has brought this motion for summary judgment. In the motion for summary judgment he seeks the following relief:

1. A declaration that both of the defendants are common employers and are therefore responsible for any damages for the relief claimed in this action;

2. Damages for wrongful dismissal based on a reasonable notice of 10 months;

3. Damages for loss of fringe benefits equivalent to 10% of the damages for reasonable notice;

4. Expense reimbursement of $16,680.03; and

5. Moral damages for the breach of the duty of good faith in the sum of $20,000.

[3] In their response to the motion for summary judgment the defendants agree that they are jointly responsible for any damages owed to the plaintiff. They also agree that the sum of $16,680.03 is owed to the plaintiff on account of reimbursement for his out of pocket expenses incurred on behalf of his employer. Both parties agree that pre-judgment interest applies to the amount owed for the prepaid expenses.

[4] The defendants assert that any amount owed on account of reasonable notice should be reduced based on the plaintiff's alleged failure to mitigate his damages.

[5] As a result, the following issues remain outstanding between the parties:

1. What is the period of reasonable notice owed to the plaintiff;

2. What amount is owed by the defendants on account of fringe benefits;

3. Should any award owed to the plaintiff be reduced based on a failure to mitigate; and

4. The plaintiff's claim for damages for bad faith.

Position of the Parties

[6] The plaintiff's position is that he is entitled to reasonable notice of 10 months and also seeks 10% for loss of benefits. The plaintiff denies that there ought to be any reduction on account of mitigation. The plaintiff seeks $20,000 on account of moral damages for bad faith.

[7] The defendants' position is that the period of reasonable notice should be in the area of 3 ½ to 5 months. Further, the defendants seek a reduction based on the alleged plaintiff's failure to mitigate his damages. The defendants deny that any amount should be awarded for loss of fringe benefits. Finally, the defendants deny that the plaintiff should be entitled to any award for moral damages.

Rule 20 – Summary Judgment

[8] This is a motion for summary judgment which is governed by Rule 20. Rule 20.04(2) provides that,

(2) the court shall grant summary judgment if,

> (a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

Rule 20.04(2.1) provides that,

> (2.1) in determining under clause 2(a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and if the determination is being made by a judge the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at trial:
>
> 1. Weighing the evidence;
>
> 2. Evaluating the credibility of a deponent;
>
> 3. Drawing any reasonable inferences from the evidence.

[9] At paragraph 32 of the defence factum, the defendants acknowledge that this matter is suitable for determination by summary judgment. I agree.

[10] In 2014, the Supreme Court of Canada released its decision in *Hryniak v. Mauldin*, 2014 SCC 7. In its decision the Supreme Court of Canada notes that there will be no genuine issue requiring a trial when a judge is able to reach a fair and just determination on the merits of a motion for summary judgment. This would be the case when the process allows the judge to make the necessary findings of fact, allows the judge to apply the law to the facts, and is a proportionate, more expeditious, and less expensive means to achieve a just result. The question the court must consider is whether the judge has confidence that he or she can find the necessary facts and apply the relevant legal principles to fairly resolve the dispute.

[11] In the present case I have concluded that the issues raised in the summary judgment motion do not require a trial. For the following reasons I believe I am in a position to make the necessary findings of fact and apply those facts to the law in a way that will reach a fair and just determination on the merits of this case.

The Period of Reasonable Notice

[12] The plaintiff was initially employed by the Pinestone Resort as a General Manager from May, 2015 to September, 2016. According to the defendants, this employment ended with the plaintiff's termination.

[13] The plaintiff was again employed by the Pinestone Resort as a General Manager from October 1, 2018 to December 10, 2021. In the plaintiff's brief it was suggested that the plaintiff signed an employment agreement for this period of time. However, in their material the defendants have advised that they were not able to locate any agreement and they are not relying upon any agreement with the plaintiff to limit the plaintiff's severance entitlement.

[14] There is no evidence before me to suggest that the plaintiff was given any seniority based on his earlier employment between August, 2015 and September, 2016. I therefore have concluded that his period of reasonable notice should be based on his employment between October 1, 2018 and December 2021, which is a period of just over three years.

[15] Mr. Teljeur is currently 57 years old. In his role as General Manager he states that he was responsible for managing all aspects of the operations of the Pinestone Resort. He says that he met with departments daily to ensure that the resort staff were properly prepared and had the proper resources and supplies. He further states that he hired and managed a very good team of employees and was responsible for reviewing and coordinating staff schedules and any staff related issues. He also says that he was responsible for managing the resort's social media pages and marketing. In addition, he was required to respond to guest complaints. In the defence material, the defendants acknowledge that the plaintiff was responsible for hiring and training employees. He was also responsible for various departments of the Pinestone Resort. As part of his role, the plaintiff also attempted to increase guest attendance with marketing and social media.

[16] I have concluded based on the above evidence that Mr. Teljeur should be considered as a senior manager within the corporation. He earned an income of $72,500 per annum.

[17] In support of its position that the plaintiff should be entitled to 10 months notice, the plaintiff relies on the case of *Pavlov v. The New Zealand and Austrialian Land Company Limited*, 2021 ONSC 7362. In that case the plaintiff was employed as the director of marketing and communication for the defendant. His employment was terminated on May 28, 2020 during the COVID pandemic. He had been employed by the company for almost three years of employment. It is significant to note, however, that the trial judge in that case accepted the plaintiff's evidence that he was induced to leave his previous employer to join the defendants' company. Thus, while the court awarded 10 months of reasonable notice to the plaintiff in that case, the issue of inducement would certainly justify a higher period of notice than would otherwise be the case.

[18] In the present case the defendants argue that the period of notice should be in the area of 3 ½ to 5 months. They rely in large part on the short period of service of the plaintiff which totalled just over 3 years. However, length of service is simply one of several factors which a court will take into account in setting the period of reasonable notice. In the leading case of *Bardal v. Globe & Mail Ltd.*, 1960 CanLII 294 (ON SC), the court set out four factors to determine the period of reasonable notice in any particular class of case. These factors are:

1) the length of the employment;

2) the character of the employment;

3) the employee's age; and

4) availability of similar employment having regard to the experience, training and qualifications of the employee.

[19] In the present case while the plaintiff's duration of employment was relatively short at just over three years, he was employed in a senior management role and he was by my calculation 56 years old at the time of the termination of his employment which puts him at a senior age level. He was employed in a senior management capacity and has had challenging circumstances in terms of finding new employment, likely due in part, to the COVID pandemic and possibly due to his age.

[20] The closest case to the present circumstances I have been able to identify is a decision of Justice Akbarali in her decision in *Merida Lake v. La Presse* (2018) *Inc.*, 2021 ONSC 3506 (CanLII). In that decision the plaintiff worked for the defendant for 5 ½ years as a general manager. She was the most senior employee in the Toronto division, reporting to the Vice President of Sales and Operations in Montreal. The plaintiff's employment was terminated after the defendant decided to close its Toronto office. The motion judge concluded that the reasonable period of notice was eight months. That case was appealed on the issue of mitigation. The issue of reasonable notice was not challenged on the appeal which is reported at *Lake v. La Presse,* 2022 ONCA 742.

[21] In the present case the plaintiff is older than the plaintiff in the *Lake* decision. However, his period of employment was shorter. I note that the plaintiff in this case was also dismissed during the COVID pandemic. Taking into account the shorter period of employment I have concluded that the reasonable period of notice in this case should be assessed at seven months. The defendants are entitled to a credit for the severance payments made to the plaintiff following his termination.

Claim for Lost Fringe Benefits

[22] In a supporting affidavit on the motion the plaintiff asserts that he participated in the company's "Comprehensive Benefits Plan". The details of the Benefits Plan, together with the cost of those benefits, is not set out in any of the material before me.

[23] In *Russell v. The Brick Warehouse LP*, 2021 ONSC 4822, Justice Vella awarded a claim for loss of benefits equivalent to 10% of the pay in lieu of notice as reasonable and followed several other Ontario decisions in this regard. Similarly, I conclude that it is reasonable to make an award of 10% for the time period that benefits were not provided by the employer during the period of reasonable notice. I will leave it to counsel to determine the correct figure for this amount. If there is a disagreement as to the amount owing, I may be spoken to.

Mitigation

[24] The defendants argue that the period of reasonable notice should be discounted because the plaintiff has not made reasonable efforts to mitigate his damages by seeking alternate employment. The defendants raise three issues on the question of mitigation. The first objection is that the plaintiff did not make sufficient efforts to obtain alternate employment. This is reflected at paragraphs 25 to 27 of the factum where they argue as follows:

25. The Plaintiff has deposed that he updated his resume during the weeks of December 6 and 13, 2021. He then updated his accounts with Indeed, Zip Recruiter and LinkedIn. The Plaintiff received daily emails from Indeed and periodic emails from Zip Recruiter. The Plaintiff has not retained a single email from Zip Recruiter. He has only retained a handful of emails from Indeed.

26. The scope of the Plaintiff's job search efforts has been Indeed, Zip Recruiter, another resort named Red Umbrella that he learned of from a personal contact and a company he applied to as a result of a friend's referral. The Plaintiff spends "*a couple of minutes in the morning*" and "*five to ten minutes*" searching for a job through Indeed unless there is an alert. The Plaintiff has not needed to dedicate any time to Zip Recruiter job alerts.

27. The Plaintiff is not maintaining a job search chart. The Plaintiff gave an undertaking to produce a job search chart. The mitigation log that the Plaintiff produced is skeletal. It mentions the information noted in the prior paragraph above, regarding the updating of the resume, Indeed and Zip Recruiter and that the plaintiff contacted three prospective employers.

[25] The defendants also argue that the plaintiff's job search was made more difficult due to the fact that he made a number of social posts by complaining about the Pinestone Resort and its operators on Facebook.

[26] Finally, the defendants argue that the plaintiff failed to follow up on an opportunity provided by the defendants that he could assist the defendants in locating properties for them to purchase. The plaintiff at the relevant time held a real estate license.

[27] The difficulty with the defendants' position on the first two issues is that there is no evidence that a better job search effort by the plaintiff could have resulted in the plaintiff obtaining other similar employment.

[28] The defendants rely on the trial decision in *Lake v. La Presse*, where the trial judge suggested that a court may infer a plaintiff would have secured alternate employment earlier if reasonable efforts had been made. The defendants note that the trial judge held the court, "may do so whether or not there is direct evidence that jobs are available".

[29] Unfortunately for the defendants the trial judgment in the *Lake* case was appealed to the Ontario Court of Appeal who released their decision on October 31, 2022, just prior to the final submissions being made in the present case. The parties made further written submissions on the Court of Appeal decision following oral argument. In the *Lake* decision, the Court allowed the appeal on the issue of mitigation. In doing so the court notes at paragraph 7 that on the question of mitigation the motion judge recognized that the onus was on the defendant to establish that the plaintiff failed to mitigate and that there were two parts

to the analysis: first, whether the plaintiff took reasonable steps and second, if such steps had been taken that she would likely have obtained alternate employment.

[30] In allowing the appeal the Court referred to the decision of the trial judge when she stated,

> Although there was no direct evidence in front of me of other positions that the "[appellant] could have applied for, I find it is reasonable to assume that they existed".

[31] In allowing the appeal the Court of Appeal agreed that an employer could meet the second branch of the mitigation test by means of a reasonable inference from proven facts. In the *Lake* case, however, the Court found that there was "no evidence to support the inference that, if she had applied for other positions, the appellant would have found comparable employment. That conclusion was simply not available on this record".

[32] The defendants argue in this case that such an inference can be made on the facts of this case. They rely on paragraphs 41 and 43 of their factum.

[33] Paragraph 41 of the defence factum reads as follows:

> Issue D – Mitigation: It is submitted that the Plaintiff has not adequately attempted to mitigate his damages or to make a record of his mitigation efforts. Since the Plaintiff's termination 10 months ago, he has applied to three positions. He dedicates "a couple of minutes in the morning" and "five to ten minutes" searching for a job through Indeed unless there is an alert. The Plaintiff has not needed to spend any time on Zip Recruiter job alerts. The Plaintiff has also unwisely deleted emails he has received from Indeed and Zip Recruiter.

[34] It is apparent from paragraph 41 that there is no evidence in this paragraph from which an inference can be drawn that if the plaintiff had applied for other positions he would have been able to obtain comparable employment. I conclude, therefore, that this paragraph does not provide a basis for reducing any award on account of mitigation.

[35] Paragraph 43 of the defendants' factum reads as follows:

> Also, in contrast with the *Pohl* matter referred to in the Plaintiff's factum, the defendants did present the Plaintiff with possible places to apply:
>
> (a) When asked if the Plaintiff approached Sir Sam's Inn, the Plaintiff indicated that he had not as he knows the people there. The Plaintiff later said that he had spoken to someone who works there and he was told they were not looking to hire someone (Examination, pp. 34 and 35, qq. 162, 163 and 166);

(b) When asked if the Plaintiff approached Lakeview Motel, the Plaintiff replied that there are no jobs there as it is owner operated, other than housekeeping (Examination, p. 35, q. 169);

(c) When asked if the Plaintiff approached Kashaga Lodge, the Plaintiff indicated that it is no longer a resort but a long-term stay location (Examination, p. 36, q. 171);

(d) When asked about Bonnie View Inn, the Plaintiff was aware that it had been bought by new owners, but stated that it is operated by family (Examination, p. 36, q. 172); and

(e) It was suggested by Ravi Aurora that the Plaintiff attempt to locate properties for the Defendants to purchase as the Plaintiff is a real estate agent. The Plaintiff acknowledged being presented with this opportunity but did nothing (Examination, p. 38, qq. 184 and 185).

[36] With respect to paragraph 43, it is apparent that for subparagraphs (a) through (d), there is no evidence that any comparable job was available to the plaintiff. With respect to subparagraph (e), there is no evidence that Ravi Aurora had a comparable position available. The inquiry related to the plaintiff's work as a real estate agent. Even assuming that the plaintiff's work as a real estate agent could serve as mitigation earnings there is no evidence on how much could have been earned by the plaintiff during the period of notice. The discussion with Mr. Aurora appears to relate a discussion that took place during the termination meeting and which is considered more fully below. In these circumstances, I have concluded that there is no evidence before me which would allow me to conclude that had the plaintiff made better efforts to secure alternate employment he could have done so during the period of reasonable notice. Even if that were the case, there is no evidence as to how much he could have earned by way of mitigation. The defendants' assertion that it is entitled to a discount on account of mitigation under the first two headings is, therefore, dismissed.

[37] With respect to the allegation that the plaintiff was given an offer to assist the defendants in locating properties for the defendants to purchase and that the plaintiff did nothing to locate any properties for the defendants, I have also concluded that there is no basis under this heading to reduce the award on account of mitigation.

[38] The defendants allege that at the time of the original termination meeting the plaintiff was given an offer to assist the defendants in locating properties for the defendants to purchase.

[39] The termination meeting was in fact recorded by the plaintiff surreptitiously. I requested a transcript of the recording. On the issue of the offer made by the defendants, the transcript

indicates that one of the principals of the defendants, Ravi Aurora, told the plaintiff as follows:

> But, I'll tell you when this property sells, we're gonna have a lot of money. I need to move it somewhere, I can't put it in my pocket (inaudible) or I will have to pay capital gains (inaudible). So, I don't wanna do that and you find us something that you think is good. We could buy Bryers, to be honest with you, we could've bought Bryers. It is for sale and it's less than what this is. The only downside of Bryers is it's not waterfront and it's driven down to the ground, but the new people who bought it literally shut it down. So, they're asking 28 million. Now, mind you, I would never (inaudible) 20 million on a resort, so that's stupid, but we could buy something else. We could buy the Ramada at Jacksons Point (inaudible 6:50)…we could done that.

[40] It is apparent that the advice given to the plaintiff is that if Mr. Aurora decided to sell the existing resort he might have money available to purchase another property and the plaintiff was being invited in that scenario to provide them with assistance in finding another property to purchase. However, there is no evidence before me to suggest that the existing property was put up for sale or that it was ever sold. As a result there is no basis to find the plaintiff failed in his duty to mitigate his damages by coming back to the employer with other properties available for purchase.

[41] In summary, there is no evidence before me which would allow me to conclude that had the plaintiff made better efforts to secure alternate employment he could have done so during the period of reasonable notice. Neither are there any facts before me from which such an inference could properly be drawn. The defendants' assertion is that it is entitled to a discount on account of mitigation is, therefore, dismissed.

Moral Damages

[42] The plaintiff seeks an award of $20,000 in moral damages based on an allegation of bad faith by the defendants. The defendants deny the plaintiff's entitlement to these damages.

[43] In *Honda Canada Inc. v. Keays*, 2008 SCC 39, the Supreme Court of Canada considered the criteria which must be satisfied before an award for moral damages based on bad faith by an employer is properly made. At paragraph 57 of the *Honda Canada* decision, the Supreme Court concludes as follows:

> Damages resulting from the manner of dismissal must then be available only if they result from the circumstances described in *Wallace*, namely where the employer engages in contact during the course of dismissal that is "unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive".

[44] At paragraph 54 of the *Honda Canada* decision, the Court concludes that it was no longer necessary that there be an independent actionable wrong before damages for mental distress can be awarded for breach of contract, including an employment contract.

[45] Later at paragraph 59, the Supreme Court concludes that damages attributable to conduct in the manner of the dismissal are always to be awarded under the *Hadley* principle. The Court goes on to state,

> Moreover, in cases where damages are awarded, no extension of the notice period is used to determine the proper amount to be paid. The amount is to be fixed according to the same principles and in the same way as in all other cases dealing with moral damages. Thus, if the employee can prove that the manner of dismissal caused mental distress that was in the contemplation of the parties, those damages will be awarded not through an arbitrary extension of the notice period, but through an award that reflects the actual damages.

[46] Further, caselaw has clarified when damages for bad faith can be assessed. In *Russell v. The Brick Warehouse LP*, 2021 ONSC 4822, Justice Vella comments on the criteria as follows at para. 50:

> In the oft-cited decision of *Galea v. Walmart Canada Corp.*, 2017 ONSC 245 at para. 232, Emery J. listed factors to be considered in assessing a claim based in moral or aggravated damages as follows:
>
> (a) where an employer has breached its duty of good faith and fair dealing in the manner in which the employee was dismissed;
>
> (b) conduct that could qualify as employer's breach of good faith or the failure to deal fairly in the course of a dismissal includes employer's conduct that is untruthful, misleading or unduly insensitive and a failure to be candid, reasonable, honest and forthright with the employee;
>
> (c) where it was within the reasonable contemplation of the employer that the manner of the dismissal would cause the employee mental distress;
>
> (d) the wrongful conduct of an employer must cause the employee mental distress beyond the understandable distress and hurt feelings normally accompanying a dismissal; and
>
> (e) the grounds for moral damages must be assessed on a case by case basis.

[47] I have concluded that a claim for bad faith damages should be awarded in this case. As noted previously, the termination meeting was surreptitiously recorded by the plaintiff. This recording, however, highlights a number of disturbing aspects about the plaintiff's termination.

[48] Section 54 of the *Employment Standards Act*, 2000 S.O. 2000, c. 41, provides that no employer shall terminate the employment of an employee who has been continuously employed for three months or more unless the employee has been given written notice of termination. At the meeting with the plaintiff on December 6, the plaintiff specifically asked on at least three occasions for something "in writing". The employer agreed to do that, but there is no evidence before me that the employer gave the plaintiff notice in writing of his termination as required by the *Employment Standards Act* or as agreed to by the employer.

[49] The employer also failed to deliver his ESA entitlement no later than seven days after the employment ended or the next pay day in accordance with s. 11(5) of the *Employment Standards Act*. The defendants' evidence is that they mailed a cheque to the plaintiff on January 14, 2022, which covered the *Employment Standards Act* entitlement. The plaintiff's evidence is that this was not received by him. A new cheque was reissued on June 8, 2022. Even accepting the defence evidence that the original cheque was sent out to the plaintiff on January 14, 2022, it is clear that there was a significant delay in issuing the cheque to the plaintiff and that this delay was in violation of the *Employment Standards Act*. It also meant that the plaintiff had to go through the holiday season without the benefit of any financial support from his employer.

[50] Section 60(1)(a) of the *Employment Standards Act* provides that during the notice period the employer shall not reduce the employee's wage rate or alter any other term or condition of employment. It is conceded by the defence at paragraph 9 of their factum that the amount of $16,680.03 is owed to the plaintiff on account of reimbursement of out of pocket expenses he incurred on behalf of his employer prior to the termination of his employment. These expenses have not yet been paid to the plaintiff. The defendants argue that the plaintiff was demanding interest on the sum owed. While the issue of interest might have been a live issue, it does not excuse the failure of the defendants to pay the principal amount. The principal amount in this case represents approximately 23% of the plaintiff's annual income and is a very significant financial burden for him to carry since the date of his termination, especially given that he has not been successful in obtaining alternate employment. At the time of his termination the plaintiff was told by his employer that they needed to figure out his credit card expenses so he could get paid out, "before the next week or so".

[51] It is also significant that in the termination meeting the plaintiff was told that he would receive eight weeks severance. According to the transcript from the meeting, his employer told him as follows,

> The way we're going to do it…you need 8 weeks severance and obviously we'll still pay you for the rest of this week on top of that. You are going back and forth this week, right? So, I'm not expecting you to do that stuff for free so that's also going to get paid. I'm gonna put your termination date as of like Friday, so that you will still get paid for this whole week, and then you have another 8 other weeks of severance. It's really 9 weeks, almost, or 8 ½ weeks, right?

[52] Despite this assurance the employer limited the amount paid to the plaintiff to his *Employment Standards Act* entitlement.

[53] It is also apparent that the employer tried to encourage the plaintiff to resign his employment. During the course of the termination meeting he was told that he could tell staff that he had resigned three weeks previously which is not, of course, accurate. During the course of the meeting his employer told him,

> You don't have to resign. I'm saying it is better off for you to do it. They're offering for you to do that.

[54] It is not clear from the meeting whether the encouragement to resign was designed to limit the employer's exposure in a wrongful dismissal claim. However, that possibility cannot be ruled out. I have not, however, taken into account this possibility in considering the claim for mental distress.

[55] The plaintiff also referred to the fact that he was told that he could not come back onto the resort premises without permission from management, that staff were told not to speak to him while he was on company property and that he was further advised that if he came to the property without permission the OPP might be called. There is differing evidence as to the plaintiff's conduct post-termination. The defendants assert that the plaintiff was told the OPP might be called only after it was found that he had ignored instructions not to come on the property without permission. I have not taken this issue into account for purposes of the plaintiff's claim for moral damages. While the plaintiff was upset at the employer's threat to call the OPP and to prevent him from coming on the premises, I have concluded that the employer was within its rights to control access to its business premises and to give instructions to its employed staff while they were working on the business premises. This is not a factor which would justify a claim for moral damages.

[56] Having said that, the other issues as set out above do, in my view, constitute actions by the employer which were untruthful, misleading or unduly insensitive. They constitute a breach by the employer of their duty of good faith and fair dealing in the manner in which the employee was dismissed. I have also concluded that it would be within the reasonable contemplation of the employer that its manner of the dismissal would cause the employee mental distress.

[57] I am mindful of the requirement as set out in the *Honda Canada* decision that the award for moral damages must reflect the actual damages suffered by the plaintiff. In this regard, the evidence of the plaintiff is found at page 32 of his affidavit where he states,

> The company's failure to pay my ESA minimums, the company's mislabelling of my ROE and the ensuing delay in collecting EI benefits put me and my family in an exceptionally vulnerable position. This added significant stress to my life, on top of the stress I was experiencing as a result of being terminated.

[58] It is noted at paragraph 97 of the decision in *Pohlv v. Hudson's Bay Company*, 2022 ONSC 5230, there needs to be some evidence to support the requisite degree of mental distress, but it need not be proven by medical evidence. There is no medical evidence in this case to document the stress suffered by the plaintiff. Nevertheless, I am prepared to accept the plaintiff's evidence that all of the factors enumerated above added significant stress to his life on top of the stress he was experiencing as a result of being terminated.

[59] I have concluded that an award of $15,000 for moral damages is an appropriate award in this case and I so order.

Conclusion

[60] I award the following damages to the plaintiff:

- damages for reasonable notice based on a notice period of seven months less ESA or other amounts paid on account of notice already paid;
- ten percent of the plaintiff's compensation to the extent that benefits have not previously been provided;
- amount owing on account of reimbursement expenses $16,680.03; and
- moral damages $15,000.

[61] This award will bear pre-judgment and post-judgment interest in accordance with the *Rules of Civil Procedure* and the *Courts of Justice Act*, RSO 1990, c. 43.

[62] If counsel are not able to agree on costs, then an appointment may be taken out through the Trial Coordinator's office within 30 days of the release of these Reasons to set a date for an attendance before me to deal with the issue of costs. In the event that an attendance before me is necessary to deal with costs, then the parties at least two days prior to that hearing are to submit brief written submissions on the issue of costs.

Justice M. McKelvey

Released: February 23, 2023

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Plaintiff

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Defendants

REASONS FOR DECISION

Justice M. McKelvey

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