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REMEDIES IN LABOUR EMPLOYMENT AND HUMAN RIGHTS LAW

Field Law, James T. Casey, Joël M. Michaud

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Remedies in Labour, Employment and Human Rights Law is a unique resource which provides a comprehensive analysis of the remedial jurisdiction of adjudicators, tribunals and courts to enforce human rights and employment rights. The authors examine remedies arising from labour arbitration, from wrongful dismissal litigation, and from unjust dismissal cases under the *Canada Labour Code*, following labour relations board hearings and in the human rights context. In each instance the authors discuss the purpose and scope of the available remedial orders as well as the source of the remedial authority, then each type of remedial order is detailed and explored.

This release updates case law and commentary in Chapter 5 (Remedies for Unjust Dismissal under the Canada Labour Code).

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Highlights:

- **Remedies for Unjust Dismissal under the Canada Labour Code — Compensation and General Damages — Damages —** The Board found that it is not appropriate to award damages in lieu of reinstatement and that an award of compensation for lost earnings from the date of unjust dismissal to the date the complainant started full-time employment covering a period of 113 weeks is the appropriate remedy (*Bala and My Radio 580 Ltd., Re*, 2026 CIRB 1236 (C.I.R.B.). The complainant had not requested reinstatement as a remedy but asked for compensation in lieu of reinstatement "in an amount up to the equivalent of 12 months' earnings". Adjudicators also previously also applied the common law concept of *Wallace* damages to increase the damages award where the employer has engaged in bad faith conduct in the manner of dismissal. As the law has evolved, however, compensation for such conduct by an employer is recognized and awarded in the form of damages aggravated damages, also known as moral damages or mental distress damages (see, for example, *Ho Kwong (Ronald) Mak and Coastal Pacific Aviation Ltd., Re*, 2022 CIRB 1036 (C.I.R.B.); *Bala and My Radio 580 Ltd., Re*, 2026 CIRB 1236 (C.I.R.B.)).
- **Remedies for Unjust Dismissal under the Canada Labour Code — Mental Distress —** Adjudicators were awarding damages for mental distress and "moral damage" as part of their arsenal of equitable remedies well before the common law caught up to them in now opening the door to such damages. "Moral damage" was awarded in earlier cases for such conduct as capricious rejection of an employee's medical certificate, and failure to notify the employee, who was ready to return to work after a period of illness, that positions other than her former one were available (*Banque Republique Nationale de New-York (Canada) v. Parruggia* (Labelle, 1995) (#2427-Que.). One adjudicator limited this remedy to cases in which the employer has acted in bad faith, with malice, or has harassed the employee (*Royal Bank of Canada v. Gagnon* (Cote, 1991) (#1135-Que.). In another case, an adjudicator distinguished between moral damages and exemplary damages, rejecting a claim for exemplary damages because the employer had no malicious intent but, at the same time, awarding $5,000 in moral damages because the employer's conduct was described as abusive, libelous and defamatory to the complainant to the extent that it could objectively affect his reputation adversely and raise doubts about his honesty (*Autocar Connaisseur Inc. v. Marcil* (Dugas, 1996) (#2773-Que.)). Today, moral damages and mental distress damages are also known as aggravated damages (see, for example, *Bala and My Radio 580 Ltd., Re*, 2026 CIRB 1236 (C.I.R.B.). The Board recently reviewed the principles related to an award for aggravated damages, recognizing that such damages have been awarded in unjust dismissals to compensate for damages flowing from the manner in which employment was terminated (*Ho Kwong (Ronald) Mak and Coastal Pacific Aviation Ltd., Re*, 2022 CIRB 1036 (C.I.R.B.)). Aggravated damages are compensatory in nature and are not payable for the normal frustration, distress and hurt feelings that result from dismissal. The employer's conduct has to be inordinately callous to justify an award under this head.