



The Ontario Court of Appeal has closed the door on employee tort claims against employers for negligent infliction of mental suffering in the workplace. Specifically, the Court ruled that employers cannot be sued in tort for negligently inflicting mental distress on their employees. Rather, employees must make their claims for mental distress that occurred in the workplace on the basis of breach of the express or implied contract of employment that exists in every employment relationship.

In a ground breaking ruling in 2008 a former Bell Mobility Inc. (“Bell”) employee, Marta Piresferreira (“Piresferreira”), was awarded \$500,924 in damages for mental distress and constructive dismissal. After working for Bell as an Account Manager for 10 years Piresferreira brought an action against her former supervisor, Richard Ayotte (“Ayotte”), and Bell, for Ayotte having forcefully pushed her in the workplace, for his verbally abusive behaviour toward her and for her constructive dismissal following the pushing incident. Piresferreira was subsequently diagnosed with Post-Traumatic Stress Disorder (“PTSD”), as well as major depressive disorder. The trial judge found that Ayotte was personally liable for the torts of battery, and intentional and negligent infliction of mental suffering; and, Bell was found vicariously liable for the torts committed by the supervisor and directly liable for negligence and constructive dismissal.

This judgment was appealed in December of 2009, and was partially overturned in May 2010. It was held that the trial judge erred in finding that the tort of negligent infliction of mental suffering was available against Bell and Ayotte for conduct that occurred in the course of employment. For policy reasons, the Court was against finding that a common law duty of care could be derived from the parties’ contractual obligations. Damages for mental distress in the employment law context are already available under the framework set out in *Honda v. Keays*, [2008] 2 S.C.R. 362, in which it was held by the Supreme Court of Canada that an employee’s rights as against his employer rest in his/her contractual relationship. It was held that the trial judge further erred in finding that the employee established the tort of intentional infliction of mental suffering because Piresferreira failed to establish that Ayotte’s conduct following the battery was undertaken with the intent to cause mental suffering or the knowledge that it would result. The award was reduced to \$147,855, which consisted of \$15,000 for the tort of battery, \$87,855 for damages for the breach of her employment contract in lost wages (based on a 12-month notice period) and \$45,000 for the mental distress damages under the *Honda* framework due to the manner in which she was constructively dismissed.

Justice Juriensz reasoned that a separate cause of action such as this is “unnecessary because if the employees are sufficiently aggrieved, they can claim constructive dismissal. It is undesirable because it would be a considerable intrusion by the courts into the workplace, it has a real potential to constrain efforts to achieve increased efficiencies, and the postulated duty of care is so general and broad it could apply indeterminately.” One last important point to take away from this case is that it clarifies the requirements to find intentional infliction of mental suffering in that the alleged tortfeasor must have subjectively intended to cause harm or knew, not only that any harm could result, but that the type of harm that resulted was substantially certain to follow from his or her actions.