

Comparing general damages claims for injury to dignity in employment in Ontario: the Courts, the Human Rights Tribunal of Ontario and arbitrators

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Employees in Ontario who seek a remedy for wrongful infliction of injury to dignity or the wrongful causing of mental distress in the workplace can expect substantial variation in the outcome depending on the forum in which their claim is advanced. The courts, the Human Rights Tribunal of Ontario (HRTTO) and labour arbitrators each deal differently with claims for damages for mental distress brought by employees.

The paper looks at cases in Ontario, particularly in the past 2 years, in which general damages were awarded for mental suffering. The paper compares the way in which the three labour and employment law jurisdictions deal with awarding such damages. The paper focuses on three areas of difference: 1) the grounds on which such damages are awarded; 2) the evidence required to substantiate a claim for damages for mental distress; and 3) the quantum of damages awarded, including the treatment of interest.

The paper then examines factors that may contribute to the lower general damages amounts awarded by labour arbitrators relative to the courts and the HRTTO.