

## CASE LAW UPDATE

*Farah Malik*

### *Piresferreira v. Ayotte*

[2010] O.J. No. 2224, released 28 May 2010

#### **Employment Law – Causes of Action – Negligent Infliction of Mental Suffering Not Available in Employment Context**

A 64-year-old plaintiff brought an action against her employer and supervisor seeking damages for assault and battery, negligence, loss of past and future income, breach of contract, intentional or negligent infliction of emotional distress, mental suffering, and nervous shock and/or psycho-traumatic disability. She also sought damages from her employer for wrongful or constructive dismissal.

The plaintiff had been an employee of Bell Mobility Inc. from January 1997 to May 2005. She received excellent performance reviews until 2004 when, for reasons beyond her control, she was unable to meet her sales quota. Her sales manager, Richard Ayotte, became increasingly frustrated at the plaintiff's performance which resulted in verbal and physical abuse of the plaintiff.

At trial, Justice Aitken of the Superior Court of Justice awarded the plaintiff damages totalling \$500,955. On appeal, the Court of Appeal reduced the damages award to approximately \$147,855, broken down as follows: \$15,000 for a workplace battery that occurred on 12 May 2005; \$87,855 in lost wages; and \$45,000 for the mental suffering the plaintiff experienced because of the manner in which she was dismissed.

In overturning the trial judge's damages award, the Court of Appeal considered whether the tort of negligent infliction of mental suffering was available as a free-standing cause of action against employers. The Court held that this tort is not available in the employment context, in part, because public policy reasons weigh heavily against recognizing such a duty of care under the two-part test articulated in *Anns v. Merton London Borough Council*, [1978] A.C. 728 (H.L.). The Court of Appeal noted that compensation for mental distress is nevertheless available under the framework set out by the Supreme Court of Canada in *Honda v. Keays*. The Court also acknowledged that employees remain free to sue their employers or supervisors for intentional infliction of mental suffering.