

## Damages for Mental Distress in Breach of Contract

By Jassmine Girgis

### Cases Considered:

[\*J.O. v. Strathcona-Tweedsmuir School\*](#), 2010 ABQB 559

In *J.O. v. Strathcona-Tweedsmuir School*, the court awarded the plaintiff damages for mental distress arising from breach of contract. The facts of this case can be found in Alice Woolley's recent [ABlawg post](#).

The contract in question was one between the student, J.O., and the school. Ultimately, the court grounded its decision on the breach of contract in administrative fairness, finding that, based on the *Private Schools Regulation* (Alta. Reg. 190/2000) and on case law, the duty of fairness was an implied term of the contract. Having determined that the procedure followed by the school "fell considerably short of meeting [the school's] duty of fairness" (para. 34), the school was in breach of its contract. The court awarded the plaintiff damages in the amount of one school year's tuition for breach of the contract of instruction, and in an interesting move, also granted her contractual damages for mental distress, arising from her expulsion.

Traditionally, contractual damages were awarded for economic loss. Given that the nature of mental distress, or intangible injuries, does not have any apparent economic loss, those losses could not be claimed in an action for breach of contract. These are losses that cause the victim of a breach of contract various emotionally-ill effects, such as humiliation, distress, sadness, inconvenience, etc. In general, breach of contract claims remedied economic loss and not emotional distress, which, though inevitably arising from a breach of contract, did not fall within the commercial aspects underlying contract.

However, the courts eventually started to recognize claims for mental distress arising from claims for breach of contract. In England, these damages may be limited to situations in which "a major or important object of the contract is to give pleasure, relation or peace of mind" (*Farley v Skinner*, [2001] 4 All E.R. 801 (H.L.)). However, this limitation likely does not apply in Canada. As the court here noted, such damages may now be recoverable if they fall within the *Hadley v Baxendale* (1854), 9 Ex. 341, 156 E.R. 145, principle, namely, if they are damages "such as may fairly and reasonably be considered either arising naturally... from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it." (p.151). This principle was confirmed by the Supreme Court of Canada in *Fidler v. Sun Life Assurance Co. of Canada*, [2006] 2 S.C.R. 3, 2006 SCC 30.

The court here maintained that J.O.'s expulsion had a "traumatic effect" on her, due to the "rumours" and the "embarrassing and disturbing" scandal, in addition to her having lost a year at school (para. 58). It spoke of the defendant's "high handed and overly reactive conduct" in the case and noted that the school "has to have known the devastating effect this would have on [the student]" (para. 65). Accordingly, it awarded damages for mental distress to J.O. in the amount of \$40,000.