

Ontario Court of Appeal Rules on Deductibility of Post-Termination Earnings and Employers' Burden of Proving Failure to Mitigate

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May 21, 2026

The Ontario Court of Appeal's recent decision in *Williamson v. Brandt Tractor Ltd.*¹ provides useful clarity on the deductibility of mitigation earnings in wrongful dismissal cases. It also reaffirms the significant evidentiary burden employers face in proving that a former employee failed to make reasonable efforts to mitigate their damages through new employment following dismissal.

Background

William Williamson was a 56-year-old salesperson who had worked with Brandt Tractor Ltd. (the Company) for 18 years at the time of his termination. He had a history of performance deficiencies and was the subject of several customer complaints over his tenure with the Company.

In September 2021, the Company terminated Mr. Williamson's employment for cause based on his lengthy disciplinary record, culminating in an incident in late August 2021 in which a customer made a complaint regarding his handling of the sale of a piece of equipment. The Company relied on the principle of cumulative misconduct to support its position that it had just cause to summarily dismiss Mr. Williamson from his employment.

Trial Decision

At trial, Justice Akazaki concluded that the Company had not established just cause for dismissal based on its failure to call the customer who had complained about Mr. Williamson to testify at trial.² The Company had instead opted to rely on email evidence from Mr. Williamson's former manager referencing the customer complaint. Mr. Williamson's testimony at trial directly contradicted the customer's description of the events in question, and the court had no reliable means of determining whether the alleged misconduct actually occurred or whether the customer simply took their business elsewhere. Although Justice Akazaki found that Mr. Williamson lacked credibility, the former manager's email evidence was hearsay and insufficient to prove the truth of the customer's allegations. Justice Akazaki noted: "A negative credibility assessment of Mr. Williamson's evidence and version of events does not amount to proof that the

encounter went precisely as the customer claimed it did,”³ and further, “...the employment status of a long-time employee cannot hang in the balance of a customer’s subjective interpretation of his conduct.”⁴

With respect to mitigation, Mr. Williamson admitted at trial that following his dismissal, he accepted a lower paying job driving a parts vehicle as he wanted to get out of sales. The Company took the position that this constituted grounds to deny him damages in lieu of reasonable notice of termination. Justice Akazaki disagreed, citing the Ontario Court of Appeal’s decision in *Brake v. PJ-M2R Restaurant Inc.*⁵ as support for the conclusion that earnings from a lower-paying or ranking position are not deductible against wrongful dismissal damages. Justice Akazaki further affirmed that it is the employer’s burden to establish that a former employee failed to make reasonable efforts to mitigate their damages, and that the Company had failed to do so in this case.⁶

The Company appealed the trial decision on the grounds that Justice Akazaki had erred in concluding that it did not have just cause to dismiss Mr. Williamson and in finding that Mr. Williamson had made reasonable efforts to mitigate his damages.

Ontario Court of Appeal Upholds Lower Court Ruling on Just Cause but Overturns Decision on Deductibility of Mitigation Earnings

On appeal, the Court of Appeal for Ontario upheld the trial judge’s decision that the employer had not established just cause. In the absence of admissible evidence from the customer relating to the incident in question, the Company had failed to prove a culminating incident that would justify dismissal based on Mr. Williamson’s prior disciplinary history.⁷

With respect to mitigation, the Court did not agree that Mr. Williamson had failed to mitigate his damages by choosing not to seek a comparable job in sales. The onus was on the employer to establish not only that Mr. Williamson had failed to pursue comparable employment, but that comparable employment positions were in fact available and that Mr. Williamson would have secured such a position had he made reasonable efforts to do so. Mr. Williamson’s own admission that he did not try to find a comparable sales position did not relieve the Company of its burden of proving that comparable employment was available to Mr. Williamson.⁸

However, the Court concluded that the trial judge had erred in refusing to deduct the income Mr. Williamson had earned over the reasonable notice period from his damages simply because such earnings came from a lower-paying position, stating that “[t]here is no authority for the position that earnings from an inferior position are not deductible in mitigation.”⁹ The passage from *Brake* dealing with the deductibility of mitigation earnings, as referenced by the trial judge, had come from a concurring opinion and did not reflect the law in Ontario on the deductibility of mitigation earnings. The Court further affirmed that all employment income

earned during the reasonable notice period should generally to be treated as deductible from damages otherwise incurred by the employee.

Takeaways for Employers

Although the Court of Appeal's decision in *Brandt Tractor* offers helpful clarification on the deductibility of mitigation earnings, it is not all good news for employers. With respect to just cause for dismissal, this decision reaffirms the high evidentiary bar an employer must meet in establishing just cause, particularly where such dismissal is based on cumulative misconduct. More significantly, however, this decision highlights the challenges employers face in proving that a former employee has failed to make reasonable efforts to mitigate their damages following dismissal. Mr. Williamson's own admission that he had made no effort to find a comparable job in his field was not enough to prove that he had failed to make reasonable mitigation efforts, as the burden of proving such a failure is on the employer. Employers must establish not only that comparable work was available, but that the employee did not seek out such work opportunities, and that if they had made reasonable efforts to do so, they would likely have been successful. Given this significant evidentiary burden, employers would be well-advised to track available job market evidence (including job postings on databases such as Indeed, LinkedIn, Glassdoor, and any industry-specific job posting sites) as soon as possible following any employee dismissal in which litigation is anticipated or highly likely.

For more information on best practices with respect to employee termination and mitigation tracking, please contact any member of the Cassels [Employment & Labour Group](#).

1 2026 ONCA 272 ("*Brandt Tractor* (ONCA)").

2 *Williamson v. Brandt Tractor Ltd.*, 2025 ONSC 2571 ("*Brandt Tractor* (Ont. Sup. Ct.)") at paras. 8-15.

3 *Ibid* at para. 12.

4 *Ibid* at para. 13.

5 2017 ONCA 402 at paras. 157-58.

6 *Brandt Tractor* (Ont. Sup. Ct.) at paras. 20-22.

7 *Brandt Tractor* (ONCA) at paras. 3-5.

8 *Ibid* at para. 6.

9 *Ibid* at para. 7.