Beyond the Human Rights Tribunal of Ontario: Human Rights Damages in Civil Litigation and Key Workplace Safety and Insurance Act Tribunal Decisions[1]

Martin A. Smith

I. Introduction

Since the 2008 overhaul of Ontario's human rights regime, civil courts have been expressly empowered to award remedies for breaches of the *Human Rights Code* ("*Code*").[2] In theory, this reform fundamentally altered the remedial landscape, integrating human rights enforcement into civil litigation and positioning human rights damages as a routine component of employment disputes. In practice, however, the development of civil jurisprudence under section 46.1 has been gradual, uneven, and at times conceptually unsettled. While courts routinely affirm the importance of meaningful compensation for injury to dignity, feelings, and self-respect, the resulting damage awards have largely remained relatively modest, highly fact-specific, and closely tethered to Tribunal precedents.

This paper examines the civil jurisprudence on human rights damages in employment litigation, with particular attention to quantum. It traces the evolution of civil awards from the early post-2008 cases through the Court of Appeal's intervention in *Strudwick,*[3] and considers whether subsequent decisions reflect a genuine recalibration of damages or merely isolated outliers. The paper also briefly explains the interaction between civil human rights remedies and the statutory bar under the *Workplace Safety and Insurance Act, 1997*.

II. The Expansion of Civil Court Jurisdiction Over Human Rights Damages

Not long ago, human rights remedies in Ontario were confined to proceedings before the Human Rights Tribunal of Ontario ("HRTO"). That landscape changed in 2008 following a comprehensive overhaul of the province's human rights regime. For present purposes, the most consequential reform was the introduction of section 46.1 of the *Code*, which expressly authorizes courts to award remedies for breaches of the *Code*:

> *46.1(1) If, in a civil proceeding in a court, the court finds that a party to the proceeding has infringed a right under Part I of another party to the proceeding, the court may make either of the following orders, or both:*

---

[1] This paper was prepared for the 2026 OBA's Ontario Legal Conference: Labour & Employment Human Rights and Workers Compensation on February 3, 2026.
[2] RSO 1990, c H.19.
[3] 2016 ONCA 520.

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.

2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self- respect.

Section 46.1 is subject to a significant statutory constraint: a plaintiff may not commence a civil action based solely on an infringement of the *Code*.[4] In practical effect, claims for human rights damages must be tethered to a viable companion cause of action, such as wrongful dismissal. Once that gateway requirement is satisfied, however, the court's remedial jurisdiction is expansive. The result is a hybrid remedial model in which civil courts can grant meaningful compensation for injury to dignity, feelings, and self-respect.

III. Expansive Principles, Modest Awards

There is considerable lip service paid to the importance of general damages under the *Code*. Courts and the HRTO routinely emphasize that such awards must meaningfully reflect the seriousness of discrimination and must not be set so low as to trivialize the statute's remedial purpose.

The foundational framework for assessing human rights damages under the *Code* was articulated in the often-cited decision in *ADGA Group Consultants Inc. v. Lane*.[5] On judicial review of a HRTO decision, the Divisional Court reiterated several core principles that continue to guide the assessment of *Code* damages:

- There is no formula for determining quantum in any given case;
- The decision-maker has broad discretion in the decision maker;
- Relevant factors include humiliation, hurt feelings, the loss of self-respect, dignity and confidence by the complainant, the experience of victimization, the vulnerability of the complainant, and the seriousness of the offensive treatment;
- General damages must not be set so low as to trivialize the social importance of the *Code* by effectively creating a "licence fee" to discriminate;
- There is no ceiling on awards of general damages under the *Code*;
- Damages are compensatory, not punitive.[6]

[4] *Supra* note 2, s. 46.1(2).
[5] 2008 CanLII 39605 (ON SCDC).
[6] *Ibid* at paras. 151-159.

In practice, however, damage awards have remained relatively modest. While the rhetoric surrounding human rights damages is expansive, the quantum awarded in most civil cases reflects a far more restrained and fact-driven approach. This trend is borne out in empirical analysis of both tribunal and court damages.

IV. Empirical Critiques of Human Rights Damages

Section 57 of the *Code* required a review of the implementation and effectiveness of the changes three years after the amendments came into effect. In 2011, Andrew Pinto was commissioned to conduct a comprehensive review of Ontario's human rights system. While the Report addressed several issues related to efficiency and access to justice, it also offered sharp observations on damages. Notably, Pinto concluded that despite the legislative removal of the cap on general damages, the Tribunal's remedial approach remained conservative and made direct recommendations in that regard:

> "…there appears to be a widening gap between the Tribunal's insistence that human rights awards should be meaningful, and the actual monetary compensation that is awarded in most instances. In order for Tribunal awards to be meaningful, I recommend that the Tribunal significantly increase the range of damages that are awarded to successful applicants."[7]

In 2017, Audra Ranalli and Bruce Ryder published an empirical study analyzing general damages awards issued by the HRTO between 2000 and 2015, tabulating awards in 464 HRTO cases.[8] It confirmed Mr. Pinto's observations. The authors found that the range of general damages had remained **"**more or less constant in nominal terms over the 2000-2015 period."[9] When adjusted for inflation, however, the effective value of awards had declined.[10] Like Pinto, the authors concluded that damages were systematically too low to achieve the remedial objectives of the *Code*.

The authors also turned their mind to the limited civil case law available at the time and observed that courts had largely followed the HRTO's lead by applying the same non-indexed conventional approach to quantum, although they appeared to award slightly higher general damages.[11] That observation, however, was necessarily tentative: the available dataset consisted of only seven reported civil claims in which damages were assessed under s. 46.1.

---

[7] Andrew Pinto, Report of the Ontario Human Rights Review 2012, (Toronto: Queen's Printer for Ontario, 2012) p. 73

[8] Audra Ranalli & Bruce Ryder, "Undercompensating for Discrimination: An Empirical Study of General Damages Awards Issued by the Human Rights Tribunal of Ontario, 2000-15" (2017) 13 JL & Equal 91.

[9] *Ibid* at p. 137.

[10] *Ibid* at pp. 137-138.

[11] *Ibid* at p. 127.

V. The First Wave of Civil Human Rights Damages

Five years after the *Code* was amended to permit courts to award damages under s. 46.1, *Wilson v. Solis Mexican Foods Inc.*[12] became the first reported Superior Court decision in which a court awarded damages for a *Code* breach in the context of a wrongful dismissal action.

Wilson involved a plaintiff who was treated adversely days after disclosing that she was experiencing back pain and feeling physically unwell. After she had been off work for several weeks, her employer refused to permit her return unless she had achieved a "complete recovery."[13] No accommodation was offered or considered.[14] While the plaintiff remained on a leave of absence, her employment was ultimately terminated, purportedly due to restructuring.

The Court found that the back pain was a disability for the purposes of the *Code* and concluded that the plaintiff was given "the run around."[15] The employer's conduct reflected a failure to engage meaningfully in the duty to accommodate. In coming to its decision, the Court considered the jurisprudence from the HRTO.

In assessing damages, the Court noted that it had sparse evidence concerning the plaintiff's loss relating to "feelings, dignity and self-respect."[16] However, the Court, relying on *ADGA,* noted that compensation for breach of the *Code* also includes compensation for the intrinsic value of the infringement. The Court ultimately awarded $20,000 in general damages, recognizing both the seriousness of the infringement of the plaintiff's rights and the tangible impact of the employer's conduct.[17]

Seven years after the *Code* was amended, *Partridge v. Botony Dental Corp* provided the Court of Appeal its first opportunity to consider a civil damages award under s. 46.1.[18] The plaintiff in *Partridge* was terminated shortly after returning from maternity leave. The employer alleged she had engaged in wilful neglect. The plaintiff explained that she was discriminated against because she was given a significantly revised schedule, effective immediately, that interfered with her childcare arrangements. There were no reasons that

[12] 2013 ONSC 5799.
[13] *Ibid* at para. 67.
[14] *Ibid* at para. 68.
[15] *Ibid* at para. 70.
[16] *Ibid* at para. 80. Note that *Wilson* proceeded under simplified procedure and there was a summary trial. No oral evidence was called by either party.
[17] *Ibid* at para. 92.
[18] 2015 ONCA 836.

justified the change to her schedule; it was not a *bona fide* occupational requirement. At trial, the Court found that the dismissal constituted discrimination based on family status.[19]

In fixing *Code* damages at $20,000.00, the trial judge compared this case to a federal case[20] under the *Canadian Human Rights Act*,[21] noting that the statutory provisions were "similar." It bears noting, however, that such comparisons are arguably of limited assistance in assessing quantum, given that the federal scheme imposes a statutory cap of $20,000 on general damages, whereas the *Code* does not.[22]

The Court awarded $20,000.00 on the basis that the quantum of damages should reflect the seriousness of discriminatory conduct, particularly where it culminates in dismissal and disproportionately impacts individuals who require childcare arrangements for economic reasons. Such discrimination causes injury to dignity, feelings, and self-respect, while also imposing economic hardship on those least able to afford it. The Court emphasized that damages should both recognize this harm and serve a deterrent function, signalling to employers the obligation to accommodate childcare needs absent legitimate and justifiable grounds.[23]

The employer appealed both the liability finding and damages assessment.[24] In dismissing the appeal, the Court of Appeal found that while on the "high end," it was clearly within the range supported by the jurisprudence and by the trial judge's findings of wilful misconduct, which were fully open on the evidentiary record.

While *Partridge* illustrates an early calibration of Code damages in a relatively conventional employment discrimination context, another case that same year, *Silvera v. Olympia Jewellery Corporation*[25] underscores how higher awards (albeit not as high as one might expect) are justified where the misconduct is sustained, coercive, and deeply harmful.

In *Silvera,* the plaintiff was subjected to repeated sexual assaults, coercion, and both sexual and racial harassment.[26] Following a period of medical leave, she was wrongfully

---

[19] 2015 ONSC 343.
[20] *Johnstone v. Canada (Border Services*), 2014 FCA 110.
[21] R.S.C. 1985, c. H.6.
[22] The $20,000.00 cap was recently challenged as unconstitutional but was ultimately upheld in *Parkdale Community Legal Services v. Canada*, 2025 FC 912.
[23] *Supra* note 19 at 98.
[24] *Supra* note 18.
[25] 2015 ONSC 3760.
[26] *Ibid* at paras. 35, 42-44.

dismissed.[27] The evidence established that she suffered from post-traumatic stress disorder and depression.

After finding that the plaintiff experienced "the full list of consequences to be considered" [28] in assessing human rights damages, the Court awarded $30,000 under the *Code*.

If *Silvera* demonstrates the then outer edge of what courts were prepared to award in cases involving extreme and sustained misconduct, *Nason v. Thunder Bay Orthopaedics Inc.*,[29] decided the same year, illustrates the moderating role of contextual factors in calibrating Code damages, even where discrimination is clearly established.

In *Nason*, the Court found that the plaintiff's termination was discriminatory and contrary to the *Human Rights Code*, concluding that his ongoing physical disability was a material factor in the employer's decision to dismiss him. In that case, the plaintiff experienced carpal and cubital tunnel syndrome.[30] He filed a WSIB Report. He raised the possibility that his employment might be coming to an end, but the employer then dismissed him. The Court characterized the employer's decision to terminate when it did as "opportunistic," finding that the employer sought to exploit a deteriorating employment relationship to rid itself of a disabled employee.[31]

In assessing damages, the Court acknowledged the seriousness of terminating an employee based on disability but also considered the broader factual context. It noted that the plaintiff had been under psychological care prior to his termination and that his depression was primarily attributable to his disability and extended medical leave rather than the termination itself. The Court further considered the employer's efforts, albeit ineffective, to ameliorate the situation shortly after dismissal. Balancing these factors, the Court awarded $10,000.00 in general damages under s. 46.1(1), reflecting the importance of the right infringed, the actual impact on the plaintiff, and the unusual circumstances of the case.[32] The Court declined to award aggravated or punitive damages.[33]

The first wave of damages awards for *Code* damages in civil courts can therefore be seen as typifying a context-driven approach. However, even within this context-driven approach, the upper end of the damages range remained between $20,000 and $30,000.

---

[27] It bears noting that in *Silvera*, the defendants did not appear at trial, and their statement of defence was struck, with the result that all factual allegations were deemed admitted.
[28] *Ibid* at para. 151.
[29] 2015 ONSC 8097.
[30] *Ibid* at para. 7.
[31] *Ibid* at para. 191.
[32] *Ibid* at para. 192.
[33] The plaintiff appealed in relation to refusal to award loss of income and the defendant appealed the failure to find frustration. Both were unsuccessful. See 2017 ONCA 641.

VI. Strudwick: Defining Seriousness, Impact, and Increasing Quantum

Though now almost a decade old, the Ontario Court of Appeal's decision in *Strudwick v. Applied Consumer & Clinical Evaluations Inc.*[34] remains foundational for counsel advancing submissions on human rights damages in an employment context.

The initial decision[35] arose from a default proceeding, although defence counsel attended and made limited submissions. The plaintiff's employment was terminated after the plaintiff became deaf, likely due to a virus. Her uncontested evidence was that upon becoming deaf, her employer belittled, humiliated, and isolated her, while also encouraging her to quit and apply for disability benefits. Requests for accommodation were denied, including modest and practical measures such as receiving instructions by email, having a designated coworker alert her if the fire alarm sounded, and permitting a hearing assistance dog in the workplace.

The motion judge identified a range of damages awards between $2,000 and $30,000.00 for *Code* violations, with reference to HRTO decisions, and ultimately awarded $20,000.00 under the *Code*, characterizing the employer's conduct as unconscionable.[36] Interestingly, the motion judge declined to award aggravated damages based on having awarded pay in lieu of notice, *Code* damages, and damages for the tort of mental distress.

On appeal, the Appellant argued that the human rights damages were insufficient. The Court of Appeal agreed and memorably doubled the *Code* award to $40,000.00. In doing so, the Court emphasized that the Appellant was "made to suffer the effects of her disability to the greatest extent possible" and that the malicious conduct was designed to force her to quit.[37] The Court of Appeal further emphasized that there should be no cap on damages arising from a violation of an individual's human rights.[38]

The Court found that the motion judge had failed to adequately consider the severity of the impact of the discrimination, including the plaintiff's humiliation, isolation, depression, anxiety, and vulnerability.[39] The Court of Appeal further identified an important exacerbating factor: the employer had not merely failed to accommodate the plaintiff's disability, but had purposefully intensified the obstacles she faced in the workplace, amounting to harassment.[40]

---

[34] 2016 ONCA 520.
[35] *Strudwick v. Applied Consumer & Clinical Evaluations Inc*., 2015 ONSC 3408.
[36] *Ibid* at para. 29.
[37] *Supra* note 34 at 12.
[38] *Ibid* at para. 72.
[39] *Ibid* at paras. 63-64.
[40] *Ibid* at para. 66.

With respect to aggravated damages, the Court agreed that there was "some overlap" between the heads of damage but nonetheless assessed aggravated damages at $70,000.00.[41]

VII. Post-Strudwick Civil Damages

One might expect that, in the decade following *Strudwick*, civil courts would have shown a marked upward trajectory in human rights damages. That expectation has not, however, been borne out in the case law. Instead, recent awards continued to suggest a pattern of modest, incremental development rather than a recalibration of quantum.

The most recent reported decision is *Minkarious v. 1788795 Ontario Inc.* In this case, the Small Claims Court awarded $20,000.00 for discrimination based on disability. It is noteworthy that the employee in *Minkarious* relied upon *Wilson v. Solis Mexican Foods Inc.,* and the Deputy Judge cited heavily from *Wilson*. The Deputy Judge made a specific finding that the constructive dismissal occurred because of the plaintiff's disability.[42]

On appeal, the Divisional Court upheld the award, concluding, inter alia, that the Deputy Judge had made the requisite findings to support a *Code* remedy and that his assessment of damages fell within the accepted range for comparable claims, warranting appellate deference.[43]

Similarly restrained quantum is evident in *Khanom v. Idealogic PDS Inc.*,[44] which arose in the context of a written default judgment motion. The plaintiff, who had been employed for 13.5 years, was dismissed on the same day she requested permission to work from home during a government-mandated stay-at-home order. Her duties were entirely computer-based, and her request was motivated by concern for her husband, who suffered from health issues rendering him particularly vulnerable to COVID-19. In awarding $15,000 for the employer's breach of its obligations under the *Code*, the Court held that the plaintiff had been dismissed because of her relationship with a disabled person, contrary to s. 12 of the *Code*, which prohibits discrimination based on "relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination."

A higher, though still measured, award was made in *McGraw v. Southgate (Township)*,[45] where the Court granted $35,000 in human rights damages to a female administrative

---

[41] *Ibid* at para. 104: "Taking all of this abuse into account, I would award Ms. Strudwick $70,000 for aggravated damages. From this amount the award of $8,400.18 for the "*Wallace"* factor must be deducted to prevent overlap, resulting in a further $61,599.82 under this head of damages."
[42] *Minkarious v. 1788795 Ontario Inc.*, 2025 ONSC 7245 at para. 65.
[43] *Ibid* at para. 71.
[44] 2024 ONSC 5131.
[45] 2021 ONSC 7000.

assistant and volunteer fire captain who was terminated from her employment based on unfounded, sexist allegations and gender-based discrimination.

The dismissal followed years of toxic workplace rumours and hearsay, including allegations of inappropriate conduct and relationships that were never substantiated. The Court found that Ms. McGraw had been marginalized in a male-dominated workplace and that her termination was rooted in sexist stereotypes rather than evidence. She was not afforded any meaningful opportunity to respond to the allegations before her dismissal.

With respect to the *Code* claim, the Court held that the plaintiff had established prima facie gender-based discrimination, and that the defendants had failed to justify their conduct. Although counsel compared the case primarily to HRTO decisions, the Court observed that neither party had relied on *Strudwick*, which it identified as essential to the civil damages analysis. After accounting for concerns about duplication and emphasizing that *Code* damages are compensatory rather than punitive, the Court awarded $35,000 for injury to dignity, feelings, and self-respect, noting that it would have awarded a higher amount under this head had moral damages not also been granted.[46]

These cases provide useful benchmarks for assessing the developing contours of civil human rights damages. They also set the stage for examining *Stride v. Syra*,[47] a decision that raises broader questions about the trajectory of s. 46.1 jurisprudence and whether more awards reflect an evolution in damages or simply exceptional facts.

VIII. New Approach or Inevitable Outlier?

In *Stride*, the plaintiff brought an action for wrongful dismissal, damages for breach of the *Code*, and claims for moral and punitive damages. She was employed as a property manager in the defendant's building, where she also resided. During her employment, she was subjected to serious and ongoing harassment by two tenants, including criminal conduct of a sexually inappropriate nature. Although the plaintiff repeatedly reported this conduct to her employer, no meaningful steps were taken in response, and she was advised to contact the police if she wished to pursue the matter.[48]

The cumulative psychological impact of the harassment ultimately forced the plaintiff to take a medical leave of absence. While she remained on leave, the defendant terminated her employment and commenced eviction proceedings against her.

[46] *Ibid* at para. 231.
[47] 2024 ONSC 2169.
[48] *Ibid* at para 19.

In assessing damages, the Court adopted a novel approach: an integrated analytical framework that addressed the employer's obligations under the *Employment Standards Act*, the *Code*, the *Occupational Health and Safety Act*, and the common law under one heading. Although the analysis was framed as addressing multiple statutory breaches, the Court's reasoning centred primarily on the *Code*, referencing the principle that there is no statutory cap on damages for injury to dignity, feelings, and self-respect.

The Court ultimately awarded $125,000.00 for what it characterized as "violations of the *Acts*."[49] While the quantum is exceptional, the factual matrix was unusually severe. The employer thereafter appealed the decision.

Time will tell whether *Stride* is best understood as a fact-driven application of conventional remedial principles in an exceptionally serious case, or as a tentative recalibration of the upper boundaries of Code-based damages in the civil courts.

IX. Human Rights Damages in the Small Claims Court

While most of the jurisprudence addressing civil human rights damages has emerged from the Superior Court, an increasingly important strand of authority is developing within the Small Claims Court. For many litigants, particularly in employment disputes involving short service or low wages, the cost of Superior Court litigation is simply disproportionate to the monetary value of the claim. As litigation costs continue to rise, Small Claims Court has become increasingly important as a meaningful access-to-justice forum. With the Small Claims Court's monetary jurisdiction having expanded to $50,000 as of October 1, 2025, Deputy Judges are likely to see a growing volume of employment-related claims, including those involving human rights damages. This expanded jurisdiction positions the Small Claims Court as an increasingly significant venue for the adjudication of civil human rights claims, particularly those that would otherwise be economically non-viable.

In addition to *Minkarious*, discussed above, two other small claims court decisions merit attention, although both pre-date *Strudwick*.

A few months before *Wilson*, a Deputy Judge awarded damages under 46.1 of the *Code* in *Berkhout v. 2138316 Ontario Inc.*[50] In that case, the employer was found to have constructively dismissed the plaintiff and to have discriminated against her based on sex. The Deputy Judge fixed damages for injury to dignity, feelings, and self-respect at $15,000.

[49] *Ibid* at para. 80-81.
[50] [2013] O.J. No. 1125 (Sm. Cl. Ct.).

In *Bray v. Canadian College of Massage and Hydrotherapy*,[51] the plaintiff, a massage therapy instructor with nine years of service, was constructively dismissed following her return from maternity leave. Upon her return, her hours and responsibilities were reduced, and three months later, she was laid off. The Deputy Judge found that these changes were causally connected to her status as a new mother, as reflected in the employer's communications. On this basis, the Deputy Judge concluded that she had been discriminated against on the grounds of sex and family status. Damages for injury to dignity, feelings, and self-respect were assessed at $20,000.

The Court rejected the claim for aggravated damages, noting the absence of medical evidence and cautioning against overlapping awards that would result in overcompensation.[52] Notwithstanding that conclusion, the Court awarded $5,000 in punitive damages, reflecting the employer's misconduct. Although the plaintiff established an entitlement to $42,700 in damages, recovery was limited by the Small Claims Court's monetary jurisdiction at the time, which was $25,000.00.[53]

X. A Brief Comment on The Relationship Between Aggravated/Moral Damages and Human Rights Damages

Civil courts increasingly confront the risk of overlapping damage awards. Moral and aggravated damages address mental distress arising from bad faith conduct in the manner of dismissal. Human rights damages compensate injury to dignity, feelings, and self-respect arising from discriminatory conduct. While these heads of damages may overlap factually, they remain conceptually distinct.

Although civil courts frequently award both aggravated or moral damages and damages under s. 46.1 of the *Code* in the same proceeding, arising from the same factual matrix, the jurisprudence has not articulated a settled framework governing their practical relationship.

This relationship was discussed in *Doyle v. Zochem*,[54] where the Court of Appeal explained that aggravated damages are intended to compensate an individual for mental distress arising from a particularly callous manner of dismissal, whereas *Code* damages are remedial in nature and designed to compensate for the intrinsic harm flowing from the loss of the right to be free from discrimination. The Court explained that where the awards in

[51] 2015 CanLII 3452 (ON SCSM).
[52] *Ibid* at para. 70.
[53] The Court declined to award aggravated damages, citing the absence of medical evidence and cautioning against overlapping heads of compensation that would result in overcompensation. Notwithstanding that conclusion, the Court awarded $5,000 in punitive damages, reflecting the seriousness of the employer's misconduct.
[54] 2017 ONCA 130.

question vindicate different interests in law, there is no overlap in damages awarded, even though the same conduct is considered.[55]

In practice, however, courts have not developed a structured methodology for allocating or calibrating damages between these categories, nor have they provided principled guidance on how overlapping psychological, emotional, and dignitary harms should be parsed between them. This has produced a remedial landscape in which overlapping forms of harm may be compensated through distinct doctrinal routes, with limited articulation of their respective boundaries in valuation and therefore limited predictability for practitioners. The case law would benefit from clearer guidance on their interaction.

Below are examples of these damages awards from some of the aforementioned cases:

Case	Year	Code Damages	Moral/Aggravated Damages
Bray	2015	$20,000.00	$0.00
Silvera	2015	$30,000.00	$90,000.00
Doyle	2016	$25,000.00	$60,000.00
McGraw	2021	$35,000.00	$75,000.00
Khanom	2024	$15,000.00	$3,000.00
Stride	2024	$125,000.00	$50,000.00

XI. Workplace Safety and Insurance Benefits and Right to Sue Applications

As part of this paper, we were asked to comment on WSIB benefits and *Code* remedies.

As a starting point, WSIB benefits are statutory benefits under the *Workplace Safety and Insurance Act*, *1997*, (*WSIA*), paid to workers who are injured or become ill because of their job. These benefits are provided in exchange for the workers losing the right to sue. WSIB benefits serve entirely different purposes than *Code* damages, and therefore, the receipt of WSIB benefits is not a consideration in assessing *Code* damages. A worker can receive both WSIB benefits and still recover Code damages under 46.1. There is no jurisdiction under the WSIA to adjudicate claims under the *Code*.

What is important to recall is that the *WSIA* removes a worker's right to sue in civil court for personal injury and, therefore, employers have occasionally argued that 46.1 damages, for injury to dignity, feelings, and self-respect, is a form of personal injury that ought to be barred.

[55] *Ibid* at para. 49.

A series of Workplace Safety and Insurance Appeals Tribunal ("WSIAT") decisions confirm that human rights claims fall outside the WSIA's statutory bar.

Decision No. 428/24[56] provides one of the clearest recent articulations of why *Code* damages pleaded under s. 46.1 should survive a *WSIA* right-to-sue challenge, even where the factual matrix involves workplace harassment and psychological harm. The WSIAT engaged in a principled inquiry grounded in the historic trade-off underlying workers' compensation legislation. While acknowledging that *Code* remedies may include compensation for "injury to dignity, feelings and self-respect," which could be characterized as a 'personal injury,' the WSIAT concluded that human rights claims are not, in substance, personal injury torts of the type surrendered by workers in exchange for no-fault compensation.

This decision emphasizes both the distinct normative character of human rights protections and the historical reality that civil human rights claims did not exist at common law prior to the 2008 amendments introducing s. 46.1. This underscores the fact that they could not logically form part of the rights displaced by the *WSIA* statutory bar that pre-dated 2008. The decision thus provides a strong foundation for the continued availability of s. 46.1 relief in civil employment litigation, even where the underlying facts could also support a claim for chronic mental stress under the *WSIA*.[57]

Finally, a brief comment on a very recent decision. In *Frankcom v. Decast Ltd.*,[58] an interim decision released three months ago, the HTRO considered and rejected the employer's argument that an application alleging discrimination and reprisal should be dismissed because it was an abuse of process. In *Frankcom*, the employee's dismissal resulted in WSIB proceedings to adjudicate whether the termination violated the respondent's re-deployment obligations under the *WSIA*. The employer argued that the WSIB had already determined that his dismissal was unrelated to his work injury or accommodation needs. As such, the respondent argued that the substance of the Application was appropriately addressed in the WSIB proceedings. The HRTO held that the decision did not address the exact same issues as the Application and therefore did not appropriately deal with the substance of the Application and permitted the application to proceed. The employer requested reconsideration, which was denied.[59]

[56] 2025 ONWSIAT 91 (CanLII)
[57] See also *Decision No. 395/22*, 2022 ONWSIAT 1781.
[58] 2025 HRTO 2602.
[59] *Frankcom v. DECAST Ltd.*, 2026 HRTO 63.

XII. Conclusion

The civil jurisprudence under section 46.1 of the *Human Rights Code* reveals a remedial regime characterized by cautious, practical application. While courts consistently emphasize the seriousness of discrimination and the need for meaningful compensation, damage awards in employment cases have generally remained moderate. Even *Strudwick*, frequently invoked as a turning point, has functioned more as a high-water mark than as a catalyst for systemic upward recalibration. Subsequent decisions suggest continuity rather than transformation, with courts remaining attentive to proportionality, evidentiary grounding, and continued concerns about overlapping compensation.

For counsel, understanding this evolving remedial landscape is essential to accurately assessing litigation risk, structuring settlements, and advising clients on both strategic and economic considerations.