

HILL ADVISORY NEWS

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\$ 500,000 Record Workplace Harassment Award Overturned by Newfoundland and Labrador Court of Appeal



- * Roger worked with the RCMP as a jail guard. His wife Laura also worked for the RCMP. One day Roger was approached by 2 RCMP investigators who were looking into an anonymous complaint of professional misconduct involving Roger's supervisor, Corporal Stevens. It was alleged that he had been intoxicated at the scene of a fire.
- * Roger was asked to make a formal statement regarding Corporal Stevens. Roger agreed to make a statement that was unfavourable to Corporal Stevens with the understanding that it would be confidential and Corporal Stevens would not be given a copy. Roger later saw Corporal Stevens reading his statement and became very concerned as to what future repercussions would follow. Upon conclusion of the investigation, all allegations against Corporal Stevens were withdrawn or dismissed.
- * Shortly thereafter Roger began to have problems with Corporal Stevens who began an intense and unrelenting campaign of harassment against him. As a result, Roger became constantly distressed and became anxious, insecure and eventually suicidal. Roger and Laura's domestic life also began to unravel. Roger eventually went on indefinite sick leave, and he and Laura filed a lawsuit against Corporal Stevens, the RCMP and the Government of Canada for negligence, intentional infliction of mental suffering and nervous shock.
- * The trial judge stated the RCMP knew or should have known that the harassment would occur since Corporal Stevens had previously been removed from another detachment for similar behaviour. When the RCMP finally did agree to get rid of Corporal Stevens, Roger was unable to return to work because he was already experiencing anxiety, depression and nightmares. The RCMP denied any knowledge of Roger's health problems and also denied that such problems had been caused by the actions of Corporal Stevens.
- * The RCMP later filed an amended statement of defence challenging the jurisdiction of the courts to deal with Roger's claim arguing that Roger's case fell under the Government Employees Compensation Act. (GECA)
- * The RCMP noted Section 12 of the *Act* precludes court action for an 'accident' occurring during the course of employment. The trial judge disagreed. He noted 'gradual onset stress' - the alleged cause of Roger's injuries - is excluded under provincial legislation as a compensable cause of damages. (Note: When the GECA was first passed, arrangements were made whereby the provincial workers' compensation boards would adjudicate and pay compensation on behalf of the Government of Canada.) The judge found that to ensure the same entitlement to compensation between provincial and federal workers the exclusion of 'gradual onset stress' from the definition of 'accident' also applied to GECA. The judge thus determined the court had jurisdiction to proceed with the claim.
- * Near the end of the trial the judge also allowed an affidavit sworn by Roger into evidence, in addition to an order that he could not be cross-examined due to the possibility that he may commit suicide if required to testify. The judge felt that on the balance of probabilities Roger could not make a successful claim without his own evidence in the affidavit, and to refuse his request to allow the affidavit, would seriously inhibit Roger's chances of proving his case.
- * The trial judge concluded the RCMP had been negligent in failing to take steps to prevent the abuse inflicted on Roger. He added Roger 'was a kind person, dedicated to his work and proud to be associated with the RCMP' until events changed his life and left him 'profoundly and possibly irreversibly damaged.' The judge subsequently awarded damages in the amount of \$ 500,000 for loss of income and medical expenses, including aggravated damages for pain and suffering, to both Roger and his wife Laura. The RCMP appealed the decision
- * The Newfoundland and Labrador Court of Appeal identified 3 issues to be addressed. These issues included whether the trial judge erred in deciding that:
 1. He had jurisdiction to adjudicate the claim.
 2. Roger could give his evidence by means of an affidavit without being cross-examined.
 3. Roger and Laura were entitled to aggravated damages.

Continued (2)

- * The Appeal Court reviewed the Government Employees Compensation Act which defines an 'accident' as including 'a willful and an intentional act, not being the act of the employee' but does not include stress other than 'stress that is an acute reaction to a sudden and unexpected traumatic event.' Roger's claim was that since the stress had occurred over a period of years, he had 'gradual onset stress' which was not covered by the Act. The trial judge had agreed and therefore ruled that he did have jurisdiction in this case.
- * The Court found that the Act specifically addresses eligibility for compensation and thus is not intended to align with the eligibility definitions under provincial legislation. The Court noted the definition of 'accident' in the Act clearly is sufficiently broad enough to include 'gradual onset stress' resulting from a 'willful and intentional act' which encompassed the kind of 'gradual onset stress' that had incapacitated Roger.
- * The Court also noted the fact that language comparable to that in provincial legislation, which specifically excludes 'gradual onset stress,' is not employed under the Act. The Court therefore concluded the trial judge erred in determining the courts had jurisdiction to adjudicate Roger's claim since it fell under the jurisdiction of the Government Employees Compensation Act. *The Court subsequently ruled that Roger's claim must be adjudicated by the provincial workers' compensation authority in accordance with the Government Employees Compensation Act.*
- * The Court also found the trial judge erred in allowing Roger's affidavit to replace testimony, while prohibiting the RCMP from cross-examination.
- * The Court stated the right to cross-examine an opposing party is vital to procedural fairness. This action 'deprived the RCMP of the right to fully defend the claim against them.' The Court stated "If the appeal had not succeeded due to lack of jurisdiction, they would have allowed the appeal on this basis."
- * The Court also ruled that since Laura was not a dependent of Roger, and as such was not covered by the Government Employees Compensation Act, her claim was remitted for a new trial to determine its validity.
- * The Court then dealt with the issue of aggravated damages. They noted aggravated damages may be awarded in circumstances where the defendants' conduct has been particularly 'high-handed or oppressive' thereby increasing the plaintiff's humiliation and anxiety. The trial judge previously awarded aggravated damages because the RCMP defended their actions and denied Roger and Laura's claim. The Court stated the decision to defend one's self cannot amount to 'high-handed or oppressive' or 'outrageous and malicious' conduct to warrant the trial judge's award of aggravated damages.
- * The Newfoundland and Labrador Court of Appeal subsequently overturned the lower court's decision which had awarded over \$ 500,000 in damages to Roger and his wife. (Roger recently appealed this decision to the Supreme Court of Canada, but it was dismissed. The Supreme Court of Canada is not required to give any reasons for dismissals it was the final avenue of appeal for Roger, bringing to an end a legal battle that began more than 5 years ago.)

**** Although Roger lost his case for damages, the Newfoundland and Labrador Court of Appeal's decision indicates that injured workers employed by the federal government will be able to claim compensation for 'cumulative stress' at work. In this respect the ruling in Roger's case sets a precedent since a number of provinces (including Newfoundland) exclude 'gradual onset stress' from eligibility for workers' compensation. ****

★ A Case from the Front Lines 'Contest Answer' ★

In our September issue, we published a case study and posed some questions as to how the investigation should have been handled. We invited our readers to respond to us with their thoughts and rewarded the correct response with 5 hours of consult time with Hill Advisory Services. We would like to congratulate

Carolyn Golar, Health & Training Coordinator of Triple M Housing Ltd.

After careful consideration, Hill Advisory Services felt that Carolyn's feedback most appropriately fit the situation. Congratulations Carolyn! Here is an excerpt of Carolyn's response:

"Worst case the employees will file a joint suit against the company and win for allowing someone to treat them as badly as described in the witness statements. I believe that if the investigation had been completed and disciplinary actions taken as indicated by the result of the investigation the company would have been perceived as 'doing' something about the complaints. By discussing buy out they are doing nothing for the employees but show them that the boss rules - and the group at the top look after themselves - not the 'little' guys."

To view the full response or archived copies of our newsletters please visit our website: www.hilladvisory.com

★ Thanks ★

Thanks to London Drugs for inviting us in to train their supervisory and management staff throughout the country with a series of workshops involving a management perspective on 'harassment awareness and intervention' strategies.



HAPPY HOLIDAYS!



May the days of 2006 be filled with

*'joy, prosperity and love'
for you and your loved ones*

From Hill Advisory Staff