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The Supreme Court of Canada Clarifies the Law of Damages in Wrongful Dismissal Actions

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The Supreme Court of Canada released its long-awaited decision in *Honda Canada Inc. v. Keays*, substantially allowing Honda's appeal and setting aside a landmark punitive damage and costs award. The Court also clarified the nature of *Wallace* damages for undue insensitivity in the manner of termination, and discussed when punitive damages may be awarded in employment cases.

Employers in Canada may breathe a sigh of relief. The Supreme Court of Canada's view of the facts and reversal of a number of findings made by the trial judge reflects a recognition that employers are entitled to take reasonable steps to address attendance issues and work with their employees with a view to seeking viable accommodations, and that such conduct is not evidence of a "corporate conspiracy" giving rise to additional compensatory or punitive damages.

Mr. Keays, employed for 14 years by Honda Canada, was a senior quality engineering associate who developed chronic fatigue syndrome. He received disability benefits under the company's insurance plan, but the

insurer discontinued those benefits when it determined Keays could return to work. Honda attempted to work with Keays to assess his condition and his ability to return to work. However, Keays believed he was being set up for termination and refused to co-operate. Honda terminated his employment. Keays sued.

The trial judge held that Honda had acted with egregious bad faith and that there was a "protracted corporate conspiracy", and awarded reasonable notice of 15 months, an additional nine months' *Wallace* damages, \$500,000 in punitive damages and costs on a substantial indemnity basis, plus a costs premium (the total costs award being approximately \$610,000). The Court of Appeal reduced the award of punitive damages to \$100,000 and reduced the costs award, but otherwise upheld the trial judge's decision.

The Supreme Court of Canada substantially upheld Honda's appeal and dismissed Keays' cross-appeal. The Court did not interfere with the 15-month notice period, but set aside the order for punitive damages and *Wallace* damages.

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Trial Judge's Findings of Bad Faith Overturned

The trial judge made clear errors of fact. Mr. Justice Bastarache wrote: "A proper reading of the record shows that Honda's conduct in dismissing Keays was in no way an egregious display of bad faith justifying an award of damages for conduct in dismissal. ... [T]he trial judge made a number of significant overriding and palpable factual errors that relate directly to the factual matrix that justified, according to him, an award of damages for manner of dismissal... For that reason alone, the decision cannot stand." Honda had not acted in bad faith in its attempts to work with Keays to accommodate his return to work. There was no "corporate conspiracy". With respect to the award of punitive damages, the court held that Honda's conduct was not "sufficiently egregious or outrageous" to warrant such an award.

Wallace Damages Revisited

In *Wallace v. United Grain Growers*, the Supreme Court had held that if an employer is unduly insensitive in the manner of termination, the court could extend the period of reasonable notice. In *Honda*, the Court revisited that decision. The Court confirmed that termination of employment alone does not give rise to a claim of *Wallace* or aggravated damages. Only if the employer breaches its duty of good faith and fair dealing in the manner of termination, and as a result of that misconduct the employee suffered damage, may compensatory damages in excess of reasonable notice be awarded. The requirement of proof of actual damage may reduce the number of claims advanced by employees. "[I]f the employee can prove that the manner of dismissal caused mental distress that was in the contemplation of the parties, those damages will be awarded not through an

arbitrary extension of the notice period, but through an award that reflects actual damages."

Punitive Damages Clarified

Since the Supreme Court's decision in *Vorvis v. Insurance Corporation of British Columbia*, the courts have required a party seeking punitive damages in a contract case to establish an "independent actionable wrong". The lower courts had allowed the breach of Mr. Keays' rights under human rights legislation to constitute this independent actionable wrong. The Supreme Court reversed this ruling and held that a breach of human rights legislation does not satisfy the legal requirement of an independent actionable wrong to support a claim of punitive damages. Human rights legislation provides a comprehensive scheme for addressing discrimination. A person claiming discrimination must seek a remedy within the statutory scheme of the human rights legislation. In any event, there was no evidence of discrimination on the part of Honda, and Honda's conduct did not warrant punishment by way of punitive damages.

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