

Employer not to blame for employee's mental breakdown

Work can cause a lot of stress but employer's actions must be extreme and calculated for courts to award compensation

By DANIEL LUBLIN

Mental suffering at work may be real — but that doesn't necessarily amount to a successful lawsuit.

Having just been denied a promotion at work, Maria Amaral was crestfallen. As an employee of the Canadian Musical Reproduction Rights Agency for 23 years, Amaral thought she should have been promoted to manager. But her boss, Caroline Rioux, thought otherwise. Shortly after the failed promotion attempt, Amaral was disciplined for refusing a directive to write a letter.

Dejected, Amaral let her performance suffer and her attendance dropped. Rioux warned her to shape up and eventually the agency relieved Amaral of some of her duties. However, her absenteeism and job performance worsened. The agency placed her on probation and planned for her eventual dismissal.

Two days after being placed on probation, Amaral suffered a serious mental breakdown, believing the agency wanted her to leave, and never returned to work. Her next contact with her employer was through her lawyer, informing it she was suing the agency, its president, vice-president and her boss, Rioux, for the considerable damages flowing from her breakdown. She claimed they deliberately or negligently inflicted mental suffering on her.

Justice Ruth Mesbur, of the Ontario Superior Court of Justice, concluded no one could have foreseen Amaral's reaction and the agency nor its employees were responsible for her breakdown. More importantly, the court confirmed the threshold to find liability for intentionally inflicting psychiatric damage

suffered by employees is significant: The employer's conduct must be extreme, flagrant or outrageous and calculated to deliberately impose harm.

Following recent high-profile Canadian judgments for harassment and mental suffering, employees' lawyers have been adding zeroes to their precedents, claiming perceived mistreatment equates to a significant lawsuit. But they shouldn't be so hasty. Workplace law doesn't provide compensation for any stress suffered by employees at the hands of an employer — the conduct complained of must be objectively intolerable in the eyes of the judge, not just the worker.

EMPLOYMENT STANDARDS

Why did the employer succeed in its defence?

Management may be demanding, unsympathetic or insensitive, but that alone does not afford employees the right to launch a lawsuit or render the company liable for inflicting mental distress. Amaral alleged her employer made unreasonable workload demands, criticized her for failing to meet its expectations, excluded her from meetings, disparaged her and threatened her, along with a slew of other allegations, most of which were defeated at trial. According to the judge, even if the allegations were proven, their nature fell closer to the types of conduct where damages for intentionally inflicting mental distress were not awarded.

Whether an employer has inflicted mental distress is not judged through the eyes of the injured. While Amaral may have felt the agency bullied or intimidated her, the court was required to consider the employer's actions objectively, rather than through Amaral's subjective point of view. Often, where the

conduct complained of is not objectively clear or easily established, employees may be better off looking for another job rather than remaining profoundly unhappy or engaging in a lawsuit with grim prospects of recovery.

Employees should push for a negotiated resolution instead of steadfastly marching to the courtroom. Had Amaral heeded this advice, she would have been cashing settlement cheques rather than having to pay almost \$330,000 in legal costs to her former employer. And both sides would save time, effort and some costs by avoiding court.

For examples where damages were awarded for intentionally inflicting mental distress see *Boothman v. Canada* and *Prinzo v. Baycrest Centre for Geriatric Care*. Damages were not awarded in *Rinaldo v. Royal Ontario Museum*, *Noseworthy v. Riverside Pontiac-Buick Ltd.* and *Sulz v. Canada*.

For more information see:

- *Amaral et al. v. Canadian Musical Reproduction Rights Agency* (July 25, 2007) Doc. No. 01-CV-2129980 (Ont. S.C.J.).
- *Boothman v. Canada*, 1993 CarswellNat 1328 (Fed. T.D.).
- *Prinzo v. Baycrest Centre for Geriatric Care*, 2002 CarswellOnt 2263 (Ont. C.A.).
- *Rinaldo v. Royal Ontario Museum*, 2004 CarswellOnt 5209 (Ont. S.C.J.).
- *Noseworthy v. Riverside Pontiac-Buick Ltd.*, 1998 CarswellOnt 4889 (Ont. C.A.).
- *Sulz v. Canada (Attorney General)*, 2006 CarswellBC 3137 (B.C. C.A.).

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