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## WHEN IS ENOUGH, ENOUGH? A CAUTIONARY TALE WORTH A HALF MILLION DOLLARS

Recently, the Ontario Court of Appeal awarded an ex-employee \$450,000 in punitive damages. While this was reduced from the original award of \$550,000, it remained a considerable amount of money and begs the question - what did the employer do to deserve it?

In the case in question, *Pate Estate v. Galway-Cavendish and Harvey Townships*, Pate was a 43-year old municipal building inspector who was terminated with cause when the Township accused him of pocketing permit fees. Not only did Pate lose his job, but the Township convinced the police to press charges.

Based on the Township's allegations, Mr. Pate was charged and endured a four-day criminal trial which was widely publicized in the local Peterborough press. Pate was eventually acquitted of all of the criminal charges.

Pate later sued the Township for wrongful dismissal and during that trial he submitted evidence that the accusations and the criminal proceedings had been "upsetting, humiliating" and "really difficult." His spouse submitted evidence that their marriage and personal business suffered as a result and that living in a small community and having her husband dismissed then charged criminally was "stressful and embarrassing."

During the course of the civil trial, facts emerged which suggested that the Township had catered its evidence in an overt attempt to bolster Pate's guilt. Had the Township provided all of the appropriate information, no charges would have been levied.

The trial judge found that Pate was wrongfully dismissed and entitled to aggravated damages. In addition, the judge awarded Pate \$550,000 as "punitive damages".

Unlike other types of damages in employment lawsuits, punitive damages are not designed to compensate the plaintiff, but rather are awarded to punish the defendant or act as a deterrent.

In this case, the judge determined that Pate was entitled to punitive damages for a number of reasons. Among other things, the Township withheld exculpatory evidence from the police which, if they'd had, they would not have pressed charges. Pate's career, marriage, and business all suffered. He was unnecessarily humiliated in his small town. Further, Pate had to live with the allegations for 10 years and was unable to look for another job as a municipal officer.

In 2013, the Court of Appeal reduced the punitive damages to \$450,000 but still upheld the findings. All in all, the employer was required to pay Mr. Pate's estate \$450,000 in punitive damages, 12 months' wrongful dismissal damages, \$75,000 in general and aggravated damages, interest, and \$10,000 for the costs of the appeal.

The facts of this case provided a perfect storm for an award of punitive damages as the courts have awarded punitive damages in the past where the employer:

- maintained unfounded allegations of just cause warranting termination;
- unfairly and severely dismissed an employee by publically accusing him of lying and being administratively incompetent without giving him a reasonable opportunity to respond; and

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- made scandalous and unsupported allegations against the employee, such as that he resigned when he was on a medical leave of absence, that he was unfit and incapable of management due to a physical and psychological condition, and that he sexually harassed female employees, all of which were abandoned at the outset of trial.

While punitive damages awards remain rare, over the last two years they have become increasingly common and pricier.

What does this mean for you? While the facts in *Pate* are unique and extreme, the lessons are universal: (a) carefully evaluate your internal investigation process in supporting allegations of just cause; (b) don't make the decision to terminate an employee for cause lightly; (c) if you do decide to terminate an employee for cause, be honest, straightforward, and don't embellish the allegations.

Based on the court's recent willingness to award punitive damages, and in increasing amounts, mishandling a termination may cost infinitely more in the long run.

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