



Keays v. Honda: Court of Appeal lessens “whack” of trial judge’s punitive damages award, though impact still felt

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In March of 2006, the Ontario Superior Court of Justice awarded Kevin Keays a record \$500,000 in punitive damages, in addition to 24 months pay in lieu of notice, after Honda terminated Keays’ employment for frequent work absences due to chronic fatigue syndrome.¹ On September 29, 2006, the Ontario Court of Appeal held that the punitive damages awarded by the Superior Court should be dramatically reduced from \$500,000 to \$100,000. The Court of Appeal otherwise dismissed Honda’s appeal of the Superior Court decision and, in doing so, rejected Honda’s allegations of bias against the trial judge.²

The plaintiff, Kevin Keays, was diagnosed with chronic fatigue syndrome shortly after beginning his employment with Honda in 1988, and went on long term disability in 1996, returning to work in 1998 when his disability benefits were terminated. Keays continued to miss work due to his disability, and Honda required him to obtain medical notes for each absence, even though medical notes were not required from employees with “mainstream” illnesses. Honda also coached Keays with written reports, the first step in Honda’s progressive discipline process. After Keays’ lawyer sent Honda a letter outlining his concerns and requesting a resolution, Keays was asked to meet with Honda’s occupational medicine specialist. When Keays refused to see Honda’s specialist without an explanation of the purpose and methodology of the appointment, Honda terminated him for insubordination.

At trial, Justice McIsaac of the Superior Court held that Keays had been wrongfully dismissed and that such treatment constituted discrimination and harassment that warranted a punitive damages award of \$500,000. Further, McIsaac J. found that Keays was entitled damages in lieu of notice of dismissal equivalent to 15 months’ salary, along with an additional 9 months’ salary in lieu of notice due to the bad faith manner in which Honda dismissed Keays. Finally, Justice McIsaac awarded Keays his costs on a substantial indemnity basis with an additional premium of 25%, fixing the quantum of costs at \$610,000 inclusive of disbursements and GST.³

The Court of Appeal agreed that Honda’s conduct was sufficiently outrageous to warrant an award of punitive damages and upheld the lower court’s notice period of 24 months, as well as its costs award. However, the Court of Appeal significantly decreased the punitive award of \$500,000 as it found that the lower court relied on certain findings of fact that were not supported by the evidence. As well, it determined that a punitive damages award of \$500,000 did not accord with the principle of proportionality.

In particular, Rosenberg J.A., writing for the majority, found that there was no evidence to support the trial findings that Honda had been involved in a major conspiracy or was involved in the insurer’s decision to terminate Keays’ disability benefits. Further, the duration of Honda’s misconduct was seven months, not the five years

cited by the lower court, as there was no “outrageous” conduct after March 2000. In light of the compensatory damages awarded, especially the additional damages for bad faith dismissal, the short duration of the misconduct, and the fact that there were no special factors requiring deterrence, the punitive award was reduced to \$100,000.

It will be interesting to see if there is a significant increase in claims for punitive damages in future

wrongful dismissal suits as a result of the Keays decision. Despite the Court of Appeal’s reduction of punitive damages, the \$100,000 punitive award in Keays is still a significant one, especially in light of the award of damages equal to 24 months’ salary, and it emphasizes the importance of employers’ proper accommodation of employees with disabilities. If employers fail to act in good faith, they run the risk of being liable for significant damages, both compensatory and punitive.



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¹ *Keays v. Honda Canada Inc.*, [2005] O.J. No. 1145 (S.C.J.); For full text of trial decision link to:

<http://www.canlii.org/on/cas/onsc/2005/2005onsc13349.html>

² *Keays v. Honda Canada Inc.*, [2006] OJ No. 3891(CA); For full text of Court of Appeal decision, link to: http://www.ontariocourts.on.ca/decisions/OntarioCourtsSearch_VOpenFile.cfm?serverFilePath=D%3A%5CUsers%5C%20Ontario%20Courts%5Cwww%5Cdecisions%5C2006%5Cseptember%5CC43398%2Ehtm

³ Link to our firm’s prior article on the trial decision in *Keays v. Honda* at: http://www.agolaw.com/reslibrary_article.asp?article= honda