

Do Not Make a Bad Situation Worse: Court of Appeal Awards Punitive Damages for Inadequate Safety Practices following a Workplace Accident

July 12, 2021

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In *Eynon v Simplicity Air Ltd.*^[1] the Ontario Court of Appeal recognized that post-incident conduct in the workplace can expose an employer to additional liability. The Court upheld a jury award of punitive damages against the employer in the amount of \$150,000 for the post-incident actions of its supervisors and a workplace culture that fostered “illegal and reprehensible” conduct.

Background

Daniel Eynon was an employee of Simplicity Air Ltd.'s (“**Simplicity**”) who suffered significant injuries at the workplace after being challenged by a colleague to climb a 14-foot-high chain hoist. Mr. Eynon claimed that after the incident, a supervisor arrived at the scene, laughed at him, and refused to look at his injury or call an ambulance. The supervisor took Mr. Eynon to his direct supervisor who proposed to drive him home, but Mr. Eynon insisted on being taken to the hospital. It was alleged that both supervisors encouraged Mr. Eynon to say that the injuries occurred at home, not at work, and neither offered to accompany him inside the hospital.

Mr. Eynon commenced a negligence action against Simplicity and sought damages from the employer for injuries suffered in the workplace. At trial, the jury awarded him general damages and lost wages of \$18,750 and \$2,250 (after accounting for his contributory negligence). The jury also ordered punitive damages against Simplicity in the amount of \$150,000. It concluded that Simplicity played a role in causing or contributing to Mr. Eynon's injuries and that it “demonstrated a serious lack of proper safety training, documentation” and “create[ed] a culture within the company whereby employees failed to place adequate importance on best safety practices.”^[2]

Simplicity appealed the jury award of punitive damages.

The Appeal Decision

The employer argued that punitive damages should not have been left with the jury. The Court of Appeal disagreed, and held that the trial judge properly instructed the jury that they could award punitive damages if an employer's wrongful acts toward an employee “were outrageous or reprehensible and offensive to ordinary standards of decent conduct in the community.”^[3] In this case, instructing the employee to falsely report that he was injured at home was sufficient evidence to warrant punitive damages, as the instructions constitute an offence and contravene the *Workplace Safety and Insurance Act, 1997*.^[4]

The Court of Appeal also held that the trial judge's instructions to the jury provided them with the guidance they needed to assess the employer's conduct in relation to punitive damages, and that the trial judge did not err by failing to provide the jury with a range for

punitive damages.^[5]

The employer also claimed that punitive damages should be awarded based on its own actions and not the actions of its supervisors. The Court of Appeal rejected this argument. In this case, there was no requirement to find an “independent actionable wrong” on the part of the employer when the incident occurred in the course of employment such that the conduct of the supervisors was the conduct of the employer.^[6] Additionally, punitive damages will not be unwarranted against an employer when it is shown that the actions of the employees are a product of a culture within the company.^[7]

Ultimately, the Court decided not to reduce damages since the supervisors’ actions could be considered illegal and reprehensible to warrant punitive damages as a means of deterrence.^[8] However, the Court noted that punitive damages could have been reduced had the employer been prosecuted and penalized under the WSIA.^[9]

Significance

Eynon serves as a reminder to employers to ensure that their employees have adequate health and safety training. There should be safety measures in place to properly respond to accidents that occur in the workplace, and supervisors and managers should be trained on how to appropriately address incidents when they occur. This decision also serves as a warning for employers to refrain from creating or permitting an unsafe workplace culture that fosters unlawful conduct. Otherwise, a court may impose punitive damages for the post-incident conduct of its employees.

WeirFoulds has developed a flexible and targeted Employer Compliance Audit Program to assist employers with their efforts to achieve and maintain compliance with their obligations under the applicable employment laws and regulations including obligations under occupational health and safety legislation. For more information about the Employer Compliance Audit Program, please contact Daniel Wong, Partner and Chair of WeirFoulds’ Employment Law Group.

^[1] *Eynon v Simplicity Air Ltd*, 2021 ONCA 409 [*Eynon*].

^[2] *Ibid* at para 3.

^[3] *Ibid* at para 11.

^[4] SO 1997, c 16, Sched A (the supervisors instructions contravene s. 22.1 and constitute an offence under s. 155.1) [WSIA].

^[5] *Eynon*, *supra* note 1 at para 16.

^[6] *Ibid* at paras 17, 18.

^[7] *Ibid* at para 18.

^[8] *Ibid* at para 19.

^[9] *Ibid* at para 12.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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