

Case Commentary: Ontario Court of Appeal Delivers Stern Message to Employers Who Mistreat Employees with Disabilities

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By Ken Prehogan

The Plaintiff was employed by the defendant for 15 years. She earned \$12.95 per hour. She was dismissed at the age of 56 after she became totally deaf, possibly due to a virus. The conduct of her employer is summarized by Epstein, J.A. at the outset and is startling, to say the least:

“In October 2010, Ms. Strudwick suddenly became completely deaf. While the cause is uncertain, her doctors believe it was a virus. At that time, Raymond Berta, the owner and manager of Applied Consumer, was away from his business dealing with a medical problem. The general manager of Applied Consumer, Andrew Hoffman, had taken over the operations of the company in Mr. Berta’s absence. Almost immediately after Ms. Strudwick became deaf, Mr. Hoffman, together with Ms. Strudwick’s immediate supervisor, Liz Camilleri, commenced a campaign of abuse against Ms. Strudwick designed to force her resignation. This abuse will be described in more detail later in these reasons. In summary, in addition to publically belittling, harassing and isolating Ms. Strudwick in ways relating to her disability, Applied Consumer not only denied Ms. Strudwick any accommodation of her disability but also took specific steps to increase the difficulties she faced as a result of her not being able to hear. The culmination of this abuse came on May 27, 2011 when Mr. Hoffman fired Ms. Strudwick for a “stunt [she] had [allegedly] pulled” at a company event.”

The Court of Appeal awarded the plaintiff a total of \$246,049, more than double the amount awarded at trial, an unusual occurrence given the deference ordinarily accorded to the trial judge in assessing damages. The damages were awarded under various heads including wrongful dismissal (20 months), cost of replacing benefits during the notice period, Ontario Human Rights Code violations (\$40,000), intentional infliction of mental distress (\$35,294), aggravated damages (\$70,000) and punitive damages (\$55,000). The court affirmed the cost award of the trial judge (\$40,000) and awarded costs of the appeal of \$20,000. In short, the court takes a dim view of abusive employers, especially when the abuse is related to an employee’s disability.

Strudwick v. Applied Consumer & Clinical Evaluations Inc., 2016 ONCA 520

<http://www.ontariocourts.ca/decisions/2016/2016ONCA0520.htm>

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