



As of
2013

At Issue:

\$450,000 Employment Law Punitive Damage Award

James Heeneey recently successfully represented numerous complainants in their allegations against senior faculty within the business school at McMaster University. The decision resulted in the discipline of six professors, including the suspension of five.

In a case that has been developing for more than five years and which we have been carefully watching, the Court of Appeal recently reduced a trial award of \$550,000.00 in punitive damages to \$450,000.00. Despite the reduction in the punitive damage award, this case represents one of the highest, if not the highest, employment law punitive damage award in Canada.

Mr. Pate, a building inspector, was employed by the Corporation of the Township of Galway-Cavendish and Harvey for approximately 10 years when he was terminated on the basis that his employer had allegedly uncovered discrepancies with respect to the remittance of building permit fees. Mr. Pate was not provided with particulars of the allegations nor was he provided with an opportunity to respond but he was told that, if he resigned, the Town would not call the police to report the allegations. Mr. Pate refused to resign.

Dec. 11,
2013

Following Mr. Pate's termination, the Town conducted an investigation and provided the police with some information. When the police were reluctant to press criminal charges, the Town exerted pressure on them to do so. Despite the fact that charges were laid, Mr. Pate was acquitted. During the process, which lasted for approximately 10 years, the Town withheld evidence which demonstrated Mr. Pate's innocence from the investigation, took deliberate steps to damage Mr. Pate's reputation within the small community, and conducted themselves in a way that negatively impacted his employability and his marriage.

James Heeneey will be speaking at the 2013 Year End HR Law Review.



Following his acquittal on the criminal charges, Mr. Pate sued the Town for wrongful dismissal and malicious prosecution. At trial, the judge awarded Mr. Pate \$25,000 in punitive damages. Mr. Pate appealed the decision and a new trial was ordered on the issue. As a result, he was awarded \$550,000 in punitive damages.

Feb. 19,
2014

In the most recent decision of the Court of Appeal, the majority of the court held that the punitive damage award should be reduced to \$450,000.00. In reducing the amount of punitive damages, the court held that a lower punitive damage award was sufficient to satisfy the punitive purpose of the damages and to deter such behaviour. Further, the court unanimously upheld the Town was liable for malicious prosecution.

Sarah Vokey will be speaking on "Making a Finding and Preparing an Investigation Report" at the Osgoode Certificate in Labour Law.



This case serves as an important reminder for employers to deal with employee terminations with care especially where the circumstances are complicated by allegations of wrong doing.

