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HONDA – Hooked again?

Will the Supreme Court of Canada allow employees to sue employers for discrimination?
Will Honda be ordered to pay \$500,000 in punitive damages?

At the Trial of *Keays v. Honda Canada* on March 17, 2005, Justice McIsaac found that Keays, a previous employee of Honda, was wrongfully terminated for the purpose of evading Honda's duty to accommodate him under human rights law for his disability of Chronic Fatigue Syndrome. The court determined that the termination was "planned and deliberate" and "made in retaliation for [Keays] retainer of counsel to advocate for his human rights". Honda terminated Keays following his refusing to attend a medical assessment despite Honda's refusal to clarify the purpose of the medical assessment as requested by Keays. Justice McIsaac and subsequently, the Court of Appeal, unanimously found that Honda wrongfully dismissed Keays and "committed a litany of acts of discrimination and harassment" in relation to Keays' request for accommodation although being aware of their duty. Honda's manner of terminating Keays was to make an announcement to his department, which was later communicated to Keays at home by a co-worker. The Trial Court awarded Keays 15 months notice, being \$72,730, a 9 month extension to the notice

period of \$43,638 for Honda's egregious bad faith and hardball manner of dismissal, punitive damages of \$500,000 (later reduced to \$100,000 by the Court of Appeal) and costs of \$610,000, for a total judgment against Honda of \$1,226,368.

On February 20, 2008 the Supreme Court of Canada heard the appeal of this case. The appeal raised issues with respect to the relationship between human rights protections, which are currently the domain of the Human Rights Commission, and the common law as decided by the courts, in particular whether the Courts can apply common law principles to provide the same protections available through human rights legislation. When amendments to the Ontario Human Rights Code in Bill 107 becomes effective on June 28, 2008, Courts may be able to entertain claims for breach of the Human Rights Code when they are connected to another claim that must be advanced through the Courts, for example a claim for wrongful dismissal.

The Supreme Court's decision will likely refine the manner in which

the Courts approach human rights violations in an employment law context by possibly recognizing a tort of discrimination and harassment for which damages would be awarded. By incorporating human rights codes into employment contracts and imposing a duty on employers to prevent a poisoned work environment the Courts would have a direct means to remedy discrimination, allowing employees to bypass the Human Rights Commission and access the Courts instead.

Whether the Supreme Court of Canada will reinstate the trial decision that Honda pays punitive damages of \$500,000.00 and change the law so that employees can take employers to Court for Human Rights violations will be known in approximately 6 months. **ME**

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