

"YOU AND THE LAW"

Bullying Bosses Liable for Big Bucks

By Janice Mucalov, LL.B.

Bosses who harass, bully or verbally abuse their employees could be on the hook for big bucks. A ground-breaking decision of the BC Court of Appeal recently upheld a trial court's damage award of just under \$1 million for an employee, Nancy Sulz, who was the target of angry outbursts and cutting comments by her supervisor.

After joining the RCMP, Sulz was posted to Merritt as a general duty officer. She became part of a close-knit RCMP community and received excellent evaluations. Sulz planned on a long and fulfilling career with the RCMP.

Her troubles began a few months after Staff Sergeant Donald Smith became the officer in charge. Sulz, who was pregnant with her second child, was placed on light office duties. Over the next two years, she was subjected to harassing conduct by Smith, which included "angry outbursts" and "intemperate, and at times, unreasonable behaviour." He made negative comments about her pregnancy leave and her abilities (saying she had done something "stupid" at one point), put her down in front of co-workers and used harsh language with her.

After two years, Sulz became clinically depressed. She lost 20 pounds, and was unable to sleep or eat. Her doctor advised her to go on sick leave, and she eventually accepted a medical discharge.

The trial court concluded that Smith's harassing conduct created "the troubled work environment that [Sulz] experienced." The harassment she suffered was "the proximate cause of her depression, which in turn, ended her career in the RCMP." She was left unemployable in the sense that she could only work part-time doing uncomplicated tasks in a stress-free environment.

Sulz had proven the tort or civil wrong of negligent infliction of mental

suffering or harm. The RCMP had various anti-harassment policies that governed Sulz's employment. As a result, Smith owed a duty of care to Sulz to ensure that she worked in a harassment-free environment. He breached or broke that duty of care, and the breach resulted in damage to Sulz. She was awarded \$950,000 in damages, consisting of \$225,000 for past wage loss, \$600,000 for future wage loss and \$125,000 as compensation for the emotional impact of the mistreatment she endured. Smith himself was protected from liability for his negligence by virtue of the Police Act, but the provincial government (responsible for his employment in BC) was liable for his conduct and payment of the damages.

The case is important because it imposes on employers and their managers a duty of care not to bully employees. Supervisors who are overly aggressive or pursue hostile management styles risk liability if an employee is hurt by such treatment and their ability to earn a living suffers as a result.

Bullying behaviour by bosses can also trigger claims of "constructive dismissal." Constructive dismissal refers to the situation where intolerable working conditions or downgrading an employee's job position is legal justification for the employee to quit and receive severance or compensation for wrongful dismissal.

However, where the complaint is only for damages for sexual harassment (in other words, there is no claim in tort, nor any claim for wrongful or constructive dismissal), the claim can usually only be brought before the Human Rights Tribunal. These claims must generally be brought within six months of the acts of discrimination so a claimant must act quickly.

Employers must take care to control verbal and psychological abuse in the workplace – or face the consequences.

This column has been written with the assistance of Frey & Company. The column provides information only and must not be relied on for legal advice. Please contact Michael Frey for legal advice concerning your particular case.

Lawyer Janice Mucalov has authored several popular law books and writes about legal affairs for a variety of publications. "You and the Law" is a registered trade mark. ©Janice Mucalov.



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