

CANADIAN  
**Employment Law Today**

**PUBLISHED BY CANADIAN HR REPORTER**

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**CURRENT NEWS AND PRACTICAL ADVICE FOR EMPLOYERS**

**FEBRUARY 22, 2012**

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# Employer's rush to judgment leads to judgment against employer

*Employer ordered to pay more than \$500,000 for accusing employee of theft and withholding evidence from police*

| BY TOM GORSKY |

A LENGTHY litigation saga lasting more than a decade edged closer to a conclusion with the issuance of a stunning punitive damage award against an Ontario municipality.

After the amalgamation of two townships in 1998, John Pate agreed to accept a demotion from chief building official to building inspector in the newly amalgamated Galway-Cavendish Township.

Pate's new boss, John Beaven, had become suspicious Pate had committed theft of building fees. Beaven called Pate into work while Pate was away on short-term disability, informing him there were financial discrepancies, but providing no particulars. Pate did not understand of what he was being accused. He refused to accept Beaven's offer not to call the police in exchange for Pate's resignation.

Beaven had assembled a dossier, which he handed over to the police. Pate was charged but was acquitted in a criminal trial. During the trial, the Crown's case fell apart when it became apparent Beaven had withheld evidence from the police that may have helped clear Pate's name.

Pate's criminal trial received extensive media coverage. His marriage failed, partly as a result of the criminal charges, and his career as a municipal official was destroyed.

## Wrongful dismissal ensued

In Pate's subsequent wrongful dismissal suit, the township did not dispute Pate had been terminated without just cause, although it continued to maintain Pate had committed various acts of misconduct. The township disputed Pate's claims for intangible losses and mali-

cious prosecution.

The trial judge found if the exculpatory evidence had not been withheld, the criminal charges would never have been laid. The judge made numerous findings that Beaven and others at the township had desired to terminate Pate's employment.

The trial judge awarded Pate 12 months' pay in lieu of notice, plus \$7,500 in legal fees for the criminal trial. A further \$75,000 of "aggravated and general damages" was awarded to compensate Pate for the emotional distress and other intangible losses he suffered due to the township's unnecessary actions in aggravating the issues involved. Finally, the judge awarded punitive damages of \$25,000, as a sanction against the township, primarily as a result of Beaven's withholding of evidence.

## The appeal

In the spring of 2011, the Ontario Court of Appeal sent the issue of punitive damages back to the trial judge for reconsideration. This was due to the trial judge having misapprehended the correct legal tests for punitive damages and malicious prosecution.

During his reconsideration, the trial judge observed the township had never apologized or accepted responsibility for its "offensive" and "morally repugnant" conduct. As such, the judge increased his original award to \$550,000, one of the largest awards of punitive damages in a wrongful dismissal lawsuit.

## Lessons for employers

Calling the police into the workplace is a serious decision, not to be made lightly or influenced by personal animosity. If an employer develops suspicions against an employee, great sensitivity is required along with the fol-

lowing:

- Fairness should be the guiding principle.
- An employee under suspicion should always be given sufficient information about the alleged wrongdoing, and a reasonable opportunity to explain.
- The use of an independent, outside investigator is often advisable, to avoid actual or unconscious bias in the conduct of an investigation.
- Police involvement should be treated as a separate issue from the civil aspects of dismissal. Threatening to call the police as a means of extracting a resignation is not advisable or prudent.
- If a decision is made to notify police, the employer must be prepared to turn over all relevant information and documents in its possession.
- Where mistakes are made, or poor judgment is exercised, an apology should be considered. Blind adherence to allegations which are unsupported by the facts will increase the risk of additional damages being awarded by the courts.
- Consider early consultation with employment counsel experienced and knowledgeable in the sensitivities of alleged criminal conduct in the workplace.

## WRONGFUL DISMISSAL



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