



Righting a Wrong

Jeff Cottrill August 22, 2016

The Ontario Court of Appeal recently awarded \$266,000 in damages to a woman who had accused her former employer of mocking and abusing her after she lost her hearing. The court decision, authored by Judge Gloria Epstein and released on June 30, states that management at Applied Consumer & Clinical Evaluations Inc. (ACCE) conducted a “campaign of abuse” against Vicky Strudwick, who worked for the company for more than 15 years.

“It is almost impossible to imagine that in this day and age, an employer would treat an employee — a long-time employee, a dedicated employee — so horribly,” says Christopher Du Vernet, a partner with law firm Du Vernet, Stewart in Mississauga and one of Strudwick’s lawyers.

After Strudwick lost her hearing in October 2010 for reasons unknown, firm general manager Andrew Hoffman and Strudwick’s supervisor, Liz Camilleri, began mistreating her.

“Ms. Camilleri would purposely give Ms. Strudwick instructions in a manner that prevented her from lip reading. Then, Ms. Camilleri would call Ms. Strudwick ‘stupid’ for not understanding the instructions,” Epstein writes. When Strudwick could not provide a doctor’s note about her hearing loss due to the uncertainty about the cause, “Ms. Camilleri accused Ms. Strudwick of being ‘too cheap’ to produce a doctor’s note” and advised her to quit.

Hoffman refused to accommodate Strudwick’s disability at the office, and the company would not allow the Canadian Hearing Society (CHS) to conduct an accommodation assessment. On May 27, 2011, Hoffman berated Strudwick in front of 13 other employees, because she had declined to give a presentation at an office Toastmasters meeting the previous day. Strudwick was then fired for supposed insubordination and wilful misconduct. Strudwick suffered severe financial and psychological issues as a result of the company’s abuse and required extensive cognitive behavioural therapy.

Raymond Berta, ACCE chief executive officer, says that the company has since taken proper action in response to Strudwick’s mistreatment. “As a good corporate citizen, we have taken corrective action as reported and we have implemented procedures to prevent any reoccurrences.”

Duty to accommodate

The legal duty to accommodate disabled employees is covered in the *Canadian Human Rights Act*. Brian McKenzie, director of training and employment services for CHS, advises Ontario employers to consult the two key pieces of legislation, *Accessibility for Ontarians with Disabilities Act* and the *Ontario Human Rights Code*, regarding the duty to accommodate. He

also recommends that workers with hearing loss contact CHS' Employment Services department to assess accommodation needs.

“We have the skills and knowledge to help employers and employees to break down communication barriers,” McKenzie explains. “There are many workable solutions for employers; there are different systems and devices that can be used in the workplace to help accommodate an employee.” For example, technologies that help employers and employees interact include e-mail and other text-based options.

While workplaces have a legal obligation to accommodate disabled employees, Du Vernet clarifies that the duty to accommodate is not absolute or unlimited. “It is tempered in the legislation by the word ‘reasonable’, and what is reasonable depends, of course, upon the circumstances. And that includes the cost of accommodation, how the accommodations would fit into the workplace, that sort of thing.”

He adds that if an employee cannot perform the job despite accommodation, “the employer is entitled to terminate.”

But in Strudwick's case, Du Vernet believes, the duty to accommodate would not have required much from the company. She even offered to pay for all of the adjustments out of her own pocket — including new fire-exit signs that would flash light rather than just sound alarms and a device for her telephone that would have translated spoken words into print — despite a \$23,000 annual salary.

Complicating the situation further was that Strudwick was a stellar ACCE employee who had received glowing performance reviews and regular raises before she went deaf. “She was a lifer there,” Du Vernet says. “And then they kick her to the sidewalk the moment she gets a disability.”

Upon receiving an accommodation request for an employee, an employer is expected to determine the barriers affecting the worker, explore all options for removing those barriers and accommodate up to the point of undue hardship on the company, according to CHS.

For McKenzie, the ruling is a victory for disabled workers.

To Du Vernet, the decision is a strong warning to employers of the risks or financial consequences of failing to accommodate a disabled worker who is willing and able to work.

He adds that the Strudwick case is a first in Ontario in two respects. “It is the first time that the Ontario Court of Appeal has rendered a decision with respect to the *Ontario Human Rights Code*,” Du Vernet explains. “Second, it represents the present high-water mark for damages for employment breaches such as this.”

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