

Honda ordered to pay \$500,000 for firing disabled worker

Punitive damages on top of 2 years salary

By Paul Waldie *Globe and Mail: Thursday, April 7, 2005, page B4*

An Ontario court has sharply criticized **Honda Canada Inc.** for firing an employee with chronic fatigue syndrome, and has slapped the company with the stiffest penalty ever imposed in an employment case in Canada.

"Honda's misconduct was planned and deliberate and formed a protracted corporate conspiracy against" Kevin Keays, Mr. Justice John McIsaac of the Ontario Superior Court said in the recent ruling.

The judge called the company's conduct outrageous and said its actions "should make the blood boil of any right-thinking individual."

"All [Mr. Keays] was seeking from Honda was a reasonable accommodation for his disability, and, in the result, he was terminated," the judge ruled. "His condition was incompatible with the 'lean' and efficient operation demanded by Honda's corporate policy. The computer-managed workplace 'trumped' his human rights."

Judge McIsaac awarded Mr. Keays two years salary and \$500,000 in punitive damages. "This is the highest damages ever in Canada in an employment law case," said Hugh Scher, a Toronto lawyer who represented Mr. Keays. He said punitive damages are rare in employment cases, and seldom top \$25,000.

Honda spokesman Jim Miller said the decision will be appealed. He declined further comment.

Mr. Scher said the decision will have implications for other Canadians who suffer from chronic fatigue syndrome, or CFS. The illness should "not be given short shrift," he said.

Judge McIsaac said Mr. Keays was a victim of harassment and discrimination by Honda, and the company should have recognized his illness as a disability.

"Just because Mr. Keays did not carry a white cane, use a hearing aid, or get around in a wheelchair, did not make him any less deserving of workplace recognition of his debilitating condition," the judge said. "Despite his many years of affliction, he continually had to 'earn' any accommodation reluctantly granted by Honda. This ignores the fundamental principle of human rights law that accommodation is a right, not an indulgence granted by one's employer or, worse yet, an act of charity."

Mr. Keays, 38, had worked at Honda for 14 years when the company fired him in March, 2000. He was among the first workers hired at Honda's assembly plant in Alliston, Ont., which opened in 1986. The judge said he was a model employee and team leader in the quality engineering department.

Within a few years of joining the company, Mr. Keays started having bouts of drowsiness, which forced him to miss work. He was diagnosed with chronic fatigue syndrome in 1996, and went on and off disability insurance for two years. The judge said those benefits were wrongfully terminated by the insurer in 1998, and Mr. Keays returned to the plant full time.

He began missing days of work again and fell asleep at his work station, the judge said. Mr. Keays tried to work out an accommodation with Honda but it "stone walled" his efforts and referred him to two doctors who suggested there was nothing wrong with him. He was fired in March, 2000.

"I have no difficulty in finding that the plaintiff has proved that Honda committed a litany of acts of discrimination and harassment in relation to his attempts to resolve his accommodation difficulties," the judge said.