

## **Superior Court Slams Honda with Order to Pay \$500,000.00 Punitive Damages and 2 Years Salary to Fired Employee with Chronic Fatigue Syndrome**

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### ***Keays v. Honda Canada Inc. (2005) O.J. No. 1145 (SCJ)***

The plaintiff in this land-mark decision was represented by Toronto lawyer Hugh Scher of the law firm of Scher and DeAngelis. Mr. Scher also serves as counsel to the National ME/FM Action Network, ME Ontario and the Fibromyalgia Society of Ontario. His practice is dedicated to representing individuals with ME and FM in disputes with long-term disability insurers, CPP claims, workplace accommodation issues, wrongful dismissal and other such employment disputes.

On March 17, 2005, the Ontario Superior Court of Justice released its Reasons for Judgment in this important case.

Mr. Keays has suffered from Chronic Fatigue Syndrome (CFS) for many years. He began his employment at Honda when the company opened its Alliston assembly plant in 1986 and was one of the first employees hired at the Honda plant when it began operation that year.

Mr. Keays was employed for approximately 14 years before his employment was terminated for reason of Honda's refusal to accommodate his CFS and insistence that he attend a medical assessment with the company's occupational medicine specialist, without being provided with clarification of the purpose, methodology and parameters of the proposed assessment which Mr. Keays and his solicitor had requested in writing on more than one occasion.

Mr. Keays had been on disability insurance benefits for approximately 2 years when the Honda disability insurer wrongfully terminated his disability benefits after attendance at a Work Capacity Evaluation ("WCE") conducted by ASSESS MED which was described as "bogus" and a "farce". Mr. Keays' appeal of his wrongfully terminated LTD benefits was dismissed by the insurer requiring that Mr. Keays return to work even though he was still unwell and despite the concerns expressed by his treating physicians.

When Mr. Keays returned to work his absences began to increase as a result of the increased stress he was under from the return to work itself, together with the significant acts of discrimination and harassment to which he was subject by Honda management.

The court states:

**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 court was assisted by the recent Supreme Court of Canada decision in *Nova Scotia Workers' Compensation Board v. Martin* [2003] which highlights the problem faced by persons disabled by an invisible@ impairments such as chronic pain and chronic fatigue. These include Apersistent suspicions of malingering on the part of employers, compensation officials and even physicians.

**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, said the court.**

**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, worst yet, an act of charity.**

In granting the largest ever award of punitive damages in an employment case, for reason of Honda’s termination of Mr. Keays’ employment in order to avoid their obligation to accommodate his disability, the court noted:

**His condition was incompatible with the ‘lean’ and efficient operation demanded by Honda’s corporate policy. The computer-managed workplace “trumped” his human rights.**

The court goes on to state that Honda’s conduct “**should make the blood boil of any right-thinking individual**” and concludes that “**Honda’s misconduct was planned and deliberate and formed a protracted corporate conspiracy against Mr. Keays**”.

The court states:

**All that he was seeking from Honda was a reasonable accommodation for his disability and, in the result, he was terminated.**

The case raises serious issues about reasonable accommodation of CFS in the workplace, discrimination, harassment, bad faith conduct and the appropriate use of company and insurer medical assessments in the context of disputed claims and employee requests for accommodation for their disability.

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