

News

Award of \$1.4 million for reputational damage

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In perhaps the largest award ever in Canada exclusively for damage to professional reputation and career, a jury has ordered the Nova Scotia Health Authority to pay Halifax cardiologist Dr. Gabrielle Horne \$1.4 million.

The verdict in *Horne v. QEII Health Sciences Centre* delivered June 17 by a seven-member Nova Scotia Supreme Court jury in Halifax, also included \$167,460 for legal fees (see related decision 2016 NSSC 169). The costs covered only the amount that Horne spent from 2002 to 2006, after what was then known as the Capital District Health Authority changed her clinical privileges, effectively shutting down her ability to access her patients and conduct her research. The organization was later merged with other health authorities to form the Nova Scotia Health Authority.

The decision followed a 33-day trial presided over by Nova Scotia Supreme Court Justice Allan P. Boudreau.

“Any award that has been close to this appears to include loss of earnings and wrongful dismissal — and that’s not the case here,” said Michael Wright, managing partner at Toronto-based Cavaluzzo LLP, who served as Horne’s counsel, along with Toronto lawyer Danielle Stampley. “There was no wrongful dismissal. She is still a cardiologist and she still teaches, but her privileges were changed in 2002, with a fatal impact on her research.

“Typically someone would try to deal with reputational damage through a defamation claim,” Wright told *The Lawyers Weekly*. “That really didn’t fit this case. It wasn’t as much what was said about Dr. Horne. It was what was done to Dr. Horne and the impact that had on her career.”

The workplace conflict that suspended Horne’s research career and resulted in her 14-year legal battle seemed at least in part rooted in professional jealousy, said Stampley. Controversy arose over whom Horne would work with in her research on the mechanics of the heart’s septum, and who would share some of the credit for it with her. Some colleagues complained to the Capital Health Authority, which ultimately modified her clinical privileges, citing concerns over her collegiality and patient safety.

Four years later, the board of directors of Halifax’s QEII Health Sciences Centre decided those concerns did not justify removing her clinical privileges at the hospital, but the damage was already done, said Wright.

Three defendants — Capital



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Michael Wright
Cavaluzzo LLP

District Health Authority (now Nova Scotia Health Authority), Dr. Blair O’Neill, former director of the Dalhousie University Department of Medicine’s cardiology division, and John Malcolm, former CEO of Capital Health — were represented by

Scotia firm Patterson Law.

The defendants’ primary position was that they did not bear any liability, said Wright. If liability was found, however, they maintained that appropriate damages were in the range of \$25,000 to \$75,000. The judge refused their



Peter Rogers and Ian Dunbar, lawyers with McInnes Cooper. The fourth defendant — the QEII Health Sciences Centre’s Department of Medicine, affiliated with Dalhousie University — was represented by Clarence Beckett and Michael Scott with Nova

request to recommend this amount to the jury. Wright said that he and Stampley did not recommend an amount. Witnesses for the plaintiff included two experts — one who testified about ethical issues involved in medical research, and another who

described how reputational damage could affect a researcher’s ability to compete for grants.

Horne testified for six days. “I think lawyers get caught up in looking at precedents and legal arguments, but our goal here was to assist our client in telling her story,” said Wright. “When she described what she went through as a result of her colleague’s accusations, it was extremely compelling.”

As a jury trial, however, it’s impossible to know which facts the jury members found persuasive, said Stampley.

Justice Boudreau asked the jury to decide if Horne had proven on a preponderance of the evidence that the health authority had acted in bad faith or with malice in varying her privileges; “If the

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Danielle Stampley
Cavaluzzo LLP

answer was yes,” Wright recalled, “then there were a series of questions with respect to whether that bad faith or malice caused damage, and if so what amount was to be awarded to Dr. Horne to compensate for that damage.”

The unanswered question, said

Stampley, is whether the award will be enough for Horne to restart her research in the near future. The \$1.4 million award is considerably less than the \$10.4 million in damages she originally sought to re-establish her research career. Still, the \$1.4 million award “speaks to a recognition that the impact on her was substantial in the minds of her peers,” said Stampley.

David G. Coles, a lawyer with Halifax-based BoyneClark LLP, who last year represented Halifax student Laura Doucette in a successful defamation lawsuit against the province, said the award in the Horne case sends a “cautionary message to individuals and institutions in how they deal with people.”

Earlier this year, a Nova Scotia Supreme Court judge awarded Doucette \$52,000 for damages suffered when a provincial Department of Justice officer who was processing her application for a firearms licence incorrectly told her college and Dalhousie University security, where she was doing a work placement, that she was a suspect in an old armed robbery.

Defamation is one of the few civil wrongs in Nova Scotia where the plaintiff retains the right to ask for a jury, added Coles. Before 2009 in the province, he noted, a judge could provide a range for an award to the jury, but the jury could pick its number without context. Since 2009, lawyers can discuss case law with a jury, but awards are still hard to predict and appear to be rising.

Evidence of loss of reputation can be difficult to obtain, said David Mangan, an adjunct professor at Osgoode Hall Law School whose research focuses on tort, employment and contract law and particularly issues around reputation. But in Horne’s case, he noted, there was clear evidence of the tangible impact on her reputation as a heart health researcher.

“The case also highlights some further points about reputation — notably its importance in a knowledge economy where trained professionals trade on their work reputation,” added Mangan in an e-mail. “In an industry that competes on a global scale, reputation as a good environment for research is essential.”

In a prepared statement, the Nova Scotia Health Authority, said it was inappropriate for it to revisit the actions of previous organizations or administrators. “We look forward to moving on from this matter with a continued focus on fostering an environment for leading health research and care.”