

NOVA SCOTIA COURT OF APPEAL

Citation: *Horne v. Queen Elizabeth II Health Sciences Centre*, 2018 NSCA 20

Date: 20180227

Docket: CA 455575

Registry: Halifax

Between:

Gabrielle Horne

Appellant (Cross-respondent)

v.

Queen Elizabeth II Health Sciences Centre and Capital District Health Authority

Respondents (Cross-appellants)

Judges: Decision of the Court per MacDonald, C.J.N.S., Fichaud and Bourgeois, J.J.A.

Appeal Heard: November 14-15, 2017, in Halifax, Nova Scotia

Subject: Administrative bad faith – damages – appellate review of jury award

Summary: Dr. Horne was a cardiology researcher at the Queen Elizabeth II Hospital, operated by the Capital District Health Authority. In October 2002, her hospital privileges were summarily varied. Capital Health was ultimately responsible for hospital privileges. As a result, Dr. Horne’s research foundered. In September 2006, Capital Health’s board of directors determined that the summary variation, four years earlier, had been unjustified.

Dr. Horne sued Capital Health for administrative bad faith and breach of contract. There was a trial over 33 days before a

jury. Before charging the jury, the presiding judge issued a preliminary decision that (1) dismissed Dr. Horne's claim in contract, and (2) held that any damages would include loss to her research career, encompassed by damage to her reputation, but would not include the restoration of her research career. On June 17, 2016, the jury awarded Dr. Horne \$1.4 million against Capital Health for administrative bad faith.

Dr. Horne appealed. Capital Health cross-appealed.

Issues:

On Dr. Horne's appeal, the issues were whether the judge erred by withholding her contract claim from the jury, and by ruling that the restoration of her research career was not a permissible head of expectation damages for breach of contract.

On Capital Health's cross-appeal, the issues were whether the judge erroneously instructed the jury (1) on the principles of administrative bad faith and their application to the actors involved, (2) on the principles of damages, particularly by instructing that reputational loss encompasses impairment of Dr. Horne's research career and (3) by not instructing the jury of his preliminary decision that aspects of Dr. Horne's damages claim were impermissible, leading to an inflated award. Capital Health also says that (4) the jury's award of \$1.4 million was a palpable and overriding error.

Result:

The Court of Appeal dismissed Dr. Horne's appeal. Her cause of action turned on the wrongful summary variation of her privileges. The contractual documents cited by Dr. Horne did not address the variation of privileges. Section 5 of the *Medical Staff (Disciplinary) Bylaws for the District Health Authorities*, under the former *Health Authorities Act*, S.N.S. 2000, c. 6, provided that the variation of privileges was governed by those bylaws, not by contract. The judge correctly held that breach of contract did not apply and Dr. Horne's claim was limited to administrative bad faith.

The Court of Appeal dismissed Capital Health's cross-appeal against liability. The judge's jury charge, read as a whole, properly instructed the jury on the principles of administrative bad faith, and properly applied those principles to the actors involved.

The Court of Appeal allowed Capital Health's cross-appeal in part, by reducing the damages award from \$1.4 million to \$800,000.

The jury charge failed to state in plain and understandable terms the legal distinction between the recoverable and unrecoverable features of loss or impairment to Dr. Horne's research career. The charge failed to caution the jury against use of material – evidence and counsel's comments – that had pertained to Dr. Horne's initial damages claim that the judge had ultimately rejected in his preliminary decision. This material included reference to Dr. Horne's claim of \$8.2 million. The Court of Appeal held that the judge's errors of law, in this respect, were reasonably capable of affecting the jury's award and potentially caused a miscarriage of justice.

The Court of Appeal reviewed the authorities on quantification of damages, applied the required deference to the jury's assumed findings, and substituted a damages award of \$800,000.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 64 pages.