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So Apparently Pleadings Do Matter...

Lawyers are reminded of the importance of exercising care when drafting pleadings. In the recent case *Strudwick v. Applied Consumer & Clinical Evaluations Inc.*, the Ontario Court of Appeal held that not even the particularly egregious conduct of the defendants warranted relaxation of the principle that a court's jurisdiction to award damages is limited by the amount sought in the pleadings.

Ms. Strudwick worked for Applied Consumer for over 15 years, first in data entry and later instructing recruiting staff. When she suddenly became completely deaf for unknown reasons, her employer commenced a campaign of abuse against her, designed to force her resignation.

The employer's conduct was egregious. Not only did her managers wholly fail to accommodate her disability, but they expended extra effort to increase her hardship in the workplace. Among other things, requests for a visual fire alarm, an assistance dog, and access to important information in print were all denied as being "unnecessary". Applied Consumer flatly refused to accommodate Ms. Strudwick's needs, and even denied her permission to pay for certain accommodations herself. Office managers went so far as to instruct other employees to telephone Ms. Strudwick so that she would miss a call, providing yet another opportunity for management to chastise her. Every chance was taken to isolate, humiliate and belittle Ms. Strudwick.

Despite these sustained efforts to force her resignation, Ms. Strudwick did not resign. As a widow with no other source of income she had few options. After over six months of mistreatment Ms. Strudwick was finally fired in a public and humiliating manner. Ms. Strudwick commenced an action against her employer for wrongful dismissal. After failing to defend the action, Applied Consumer was noted in default, and a hearing took place to assess damages. While Ms. Strudwick claimed approximately \$240,000 in her pleadings, she was awarded \$113,782.79 by the motion judge, plus \$40,000 in costs.

Ms. Strudwick appealed the damages assessment on the basis that the award was too low. Far in excess of the \$240,000 claimed, Ms. Strudwick sought damages totalling

\$1,019,384.80 on appeal. Applied Consumer argued that the aggregate amount of the claim was limited by Ms. Strudwick's Statement of Claim.

The Court ultimately agreed with Applied Consumer's position, though seemingly reluctantly. Quoting *Whiten v Pilot Insurance*, Epstein J.A. affirmed that "one of the purposes of a statement of claim is to alert the defendant to the case it has to meet, and if at the end of the day the defendant is surprised by an award against it that is a multiple of what it thought was the amount in issue, there is an obvious unfairness."

The Court's decision was based principally on the fact that Ms. Strudwick had not sought to amend her claim prior to the appeal in order to increase the damages requested. Notably, this was a strategic move. Counsel for Ms. Strudwick did not want to provide Applied Consumer with the opportunity to take advantage of re-opening the pleadings, given that it had failed to defend the action and its motion to set aside the noting in default had been dismissed. Ms. Strudwick's un-amended Statement of Claim set the boundaries for the Court's jurisdiction to award damages.

The appeal on the damages award was determined on the basis that they could not exceed the \$240,000 claimed. The maximum amount was awarded. It is clear that the Court would have awarded a higher quantum but determined it was constrained by the pleading.

With notes from Sarah Bittman