

Employers Not Liable for Tort of Negligent Investigation – But...

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The Ontario Court of Appeal recently held that employers cannot be held liable for negligently investigating workplace misconduct that leads to criminal charges.

Despite that favourable result, employers, managers, and supervisors should be especially careful when investigating and acting on allegations of workplace misconduct that may also lead to criminal charges.

In *Correia v. Canac Kitchens* ("Canac Kitchens")¹, the Ontario Court of Appeal allowed claims to proceed against an employer, and several employees personally, after an employee was wrongly accused of theft, terminated for cause, and handed over to police.

The Facts

Canac believed employees were stealing and dealing drugs at work. Through its parent company, Kohler, it engaged the services of Aston, a private investigation firm. Aston placed an undercover agent at Canac who posed as an employee. Aston also notified the police who

provided some guidance but conducted little to no investigation of their own.

At the end of the investigation, Aston and Canac identified a number of employees. One of those individuals was Mr. Joao Correia, a 62 year-old, long-time Canac employee.

Correia was brought into a human resources office, accused of theft, and fired for cause. He was then led to another office where police were waiting to arrest him.

Unfortunately for everyone involved, especially Correia, they had the wrong man. Apparently, through a series of mistakes, Aston and Canac confused Correia with an employee with a similar name who was more than 40 years his junior.

The charges were eventually dropped but, according to Correia, the damage was already done. He and his family initiated a lawsuit against several defendants, including Canac, Kohler, Canac's head of human resources, Kohler's head of security, Aston, and the York Regional Police.

¹ 2008 ONCA 506 (CanLII) [[Click here for the case](#)].

Correia made a wide range of claims. The case at the Court of Appeal was about what claims should be permitted to continue to trial and against which defendants.

For our purposes, we will concentrate on the claims involving the employer, its parent, and its employees. Those included the following: wrongful dismissal (which was not under appeal), negligent investigation, intentional interference with economic relations, inducing breach of contract, and intentional infliction of mental distress.

A motions judge previously dismissed claims against Canac, Kohler, and their employees, for false arrest, false imprisonment, and malicious prosecution. That decision was not under appeal.

Not Liable for Tort of Negligent Investigation

The Ontario Court of Appeal ruled it was generally inappropriate to hold employers and their personnel liable for the tort of negligent investigation.

The court found that whether or not the investigation was negligent would simply be a factual issue related to Correia's wrongful dismissal claim. In that respect, it would be irrelevant whether Canac relied on a careful investigation, or a negligent one. If Correia had been wrongfully dismissed, the usual principles of liability would apply.

Moreover, the Supreme Court of Canada found in *Wallace* that no tort of bad faith discharge existed. To find Canac liable for the tort of negligent investigation would be tantamount to creating such a tort, which was not something the Court of Appeal was prepared to do.

Finally, the Court of Appeal held that if the employer were held liable for reporting what it believed, honestly though mistakenly, to be criminal activity, that would have an undesirable chilling effect on others' willingness to report crime.

Parent Company not Liable for Intentional Interference with Economic Relations or Inducing Breach of Contract

The Court of Appeal found Kohler could not be liable for the torts of intentional interference with economic relations or inducing breach of contract for the allegedly negligent investigation nor for Correia's resulting termination from employment.

The Court of Appeal found Kohler's intentions were to have Aston conduct an investigation and to cause Canac to terminate Correia's contract for just cause. Although Kohler's actions may have been negligent or even reckless, they were not wrongful.

Claims for Mental Distress to Proceed

The Ontario Court of Appeal found the claim of intentional infliction of mental distress could proceed against Canac and Aston. Significantly, the court also permitted that claim to continue against Canac's head of human resources personally, finding that she was not acting solely in her capacity as an employee when she gave Correia's name to police.

As a result of this finding, Correia may obtain damages for any mental distress that resulted from the aftermath of the negligent investigation, even though he cannot claim damages against the employer and its personnel for flaws in the investigation itself.

Lessons for Employers

The Court of Appeal found employers cannot generally be held liable for negligent investigations. Despite that finding, the court permitted claims to proceed against the employer and certain employees personally, for damages arising out of the actions they took as a result of the investigation.

Employers, internal investigators, and human resources professionals should be extremely cautious when conducting and acting on the results of workplace investigations that may lead to criminal charges. A negligent investigation could invalidate a just cause defence. Moreover, the courts can hold individuals personally liable for their actions.

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