

MENTAL DISTRESS DAMAGES: INCREASED LIABILITY FOR EMPLOYERS?

Fidler v. Sun Life Assurance Company of Canada, [2006] S.C.C. 30

By Robert M. Bell

It may be easier now for plaintiffs to recover mental distress damages. In *Fidler v. Sun Life Assurance Company of Canada*, [2006] S.C.C. 30, the Supreme Court of Canada determined that damages for mental distress for breach of contract are recoverable when “such damages were in the reasonable contemplation of the parties at the time the contract was made.” In these circumstances, a plaintiff will no longer have to establish an independent actionable wrong to recover damages for mental distress.

The plaintiff, Fidler, was a bank receptionist who fell ill and was diagnosed with fibromyalgia and chronic fatigue syndrome. As a result, she began to receive long-term disability benefits in January 1991. Sun Life discontinued these benefits in May 1997 after video surveillance suggested that Fidler was not totally disabled. Fidler admitted to driving, shopping and getting in and out of her car. However, she maintained that it was impossible for her to work and her doctor confirmed that she remained totally disabled.

In 1999, Fidler commenced an action against Sun Life for payment of benefits. The only issue at trial was Fidler's claim for mental suffering and punitive damages. The British Columbia Superior Court awarded Fidler \$20,000 in aggravated damages for mental distress, but did not award punitive damages on the basis that the Court did not believe that Sun Life had acted in bad faith. The Court of Appeal upheld the \$20,000 aggravated damages award and added \$100,000 in punitive damages. Sun Life appealed to the Supreme Court of Canada, seeking to have the aggravated and punitive damages set aside.

In its decision, the Supreme Court of Canada rejected the principle that mental distress damages are generally unavailable in breach of contract cases and that such damages require an independent actionable wrong. The Court emphasized that the controlling test for contract damages was the principle of *reasonable expectation*, which permits damages “as may fairly be considered either arising naturally...from such a breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties.”

The Supreme Court held that in order for mental distress to be compensable a plaintiff must demonstrate: (1) that an object (but not necessarily the dominant aspect) of the contract was to secure a psychological benefit that brings mental distress upon breach within the reasonable contemplation of the parties; and (2) that the degree of mental suffering caused by the breach was sufficient to warrant compensation.

Applying this test, the Supreme Court found that mental distress arising from a breach of a disability insurance contract was compensable. The Supreme Court reasoned that disability insurance is intended to provide peace of mind and financial security. Further, Ms. Fidler's mental distress was sufficient to warrant damages as the trial judge found that Ms. Fidler

“genuinely suffered significant additional distress and discomfort arising out of the loss of disability coverage.”

While *Fidler* involved a disability insurance contract, the case impacts on the principles of labour and employment law. The Supreme Court has repeatedly held that work is a fundamental aspect of an individual’s life and an essential component of the individual’s sense of identity, self-worth and emotional well-being. In light of this principle, it may be open for plaintiff-employees and unions to argue that one aspect of the employment contract is to secure a psychological benefit and that mental distress as a result of a breach was reasonably contemplated by the parties. Consequently, claims for mental distress damages may become more frequent in labour and employment-related cases.

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