

## Falsely accused employee gets \$2.1 million

*The Beer Store pressed charges using videotape of worker taking money, while suppressing video of him putting it back in the till*

A Niagara Falls, Ont. outlet of The Beer Store that fired a worker for allegedly stealing less than \$200 must now pay him more than \$2 million in damages.

The Ontario Court of Appeal recently upheld a jury award of \$2.1 million to Douglas McNeil, who had sued his former employer, The Beer Store, for malicious prosecution. The case illustrates the courts' increasing comfort with large damage awards against employers who treat employees with disregard for their rights. It also serves as a potent reminder that employers must proceed with caution when accusing employees of serious wrongdoing.

McNeil was employed by The Beer Store in Niagara Falls. As part of an investigation into property loss 13 years ago, the store set up hidden cameras. The cameras caught McNeil removing \$140 US on one occasion and \$22 Cdn on another from the store's cash register, either pocketing the cash or giving it to another employee. Other portions of video footage, however, showed McNeil placing corresponding amounts of cash into the till, consistent with his explanation and seeming to exonerate him.

The Beer Store went to the police with the incriminating



LEGAL VIEW  
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portions of the tape, but failed to point out the exonerating portions, even after being specifically asked by the police whether any such evidence existed. Criminal charges were laid, resulting in McNeil's conviction for theft. The Beer Store dismissed McNeil for cause, consistent with the criminal conviction.

McNeil grieved the termination, and the other portions of the videotape surfaced during the grievance arbitration process. McNeil used the new-found evidence to successfully appeal his criminal convictions.

McNeil then sued The Beer Store for malicious prosecution. The Beer Store maintained a position that it acted reasonably in bringing the videotape evidence to the police. At trial, the jury had little trouble finding The Beer Store had no reasonable and probable grounds for initiating the criminal proceedings

and that it had acted with malice in doing so. In making its award, the jury was clearly cognizant of the tremendous negative impact the ordeal — 13 years had lapsed between the original events and the trial — had on McNeil's personal and professional life.

In addition to \$1.3 million in damages, which included lost income, loss of care and companionship suffered by his wife and reimbursement for legal

13-year "charade" had "robbed McNeil of his reputation, his employment, his dignity and his self-respect."

The Court of Appeal's ruling is another reminder that employers must act fairly and in good faith when alleging wrongdoing against an employee, and failure to do so can have costly consequences. Employers that act on incomplete evidence, pursue flimsy allegations or, worse,

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costs, the jury awarded McNeil about \$800,000 in aggravated and punitive damages, for a total award of \$2.1 million. The Beer Store appealed the award, taking the position the award was unduly high.

The Ontario Court of Appeal refused to tamper with the award.

"The jury viewed (The Beer Store) as a calculating and insensitive company that was prepared, for its own purposes, to see a man convicted of a crime it knew he did not commit," stated the court.

It also said the employer's

conceal evidence favourable to the employee, do so at their own peril.

**For more information see:**  
• *McNeil v. Brewers Retail Inc.*, 2008 CarswellOnt 2838 (Ont. C.A.).

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