



THE LAW SOCIETY OF UPPER CANADA
130 QUEEN STREET WEST, TORONTO, ON M5H 2N6
E-MAIL: RC@LSUC.ON.CA
PHONE: 416-947-3315 OR 1-800-668-7380 EXT. 3315
FAX: 416-947-3991
VISIT WWW.LSUC.ON.CA AND CLICK ON CONTINUING PROFESSIONAL DEVELOPMENT

Workplace Safety and Insurance Law Case Study

Late Evidence

It was 10 a.m. on November 9, 2010, and the hearing before the Workplace Safety and Insurance Appeals Tribunal (WSIAT) was about to begin. Sam Andreou had just finished meeting with his client, the company's owner, Paul Curran, to give him some bad news. One of the company's witnesses, Georgina Murphy, had called the night before to say that she had found the records Sam had undertaken to try and provide to the worker's counsel when the appeal was filed in June 2009. When Paul found out that the records had been discovered, he instructed Sam to "bury them."

The Employer's Paralegal Representative

Sam Andreou has acted for employers before the WSIAT for 20 years and was licensed as a paralegal in 2008. When Sonia Paster, an employee, appealed the Board's denial of her benefit claim in June 2009, her paralegal asked Sam for the employer's records regarding medical monitoring, air quality control, air testing, storage of substances, and details concerning equipment used at the Mississauga textile factory during the time that Sonia worked there. Sam undertook to try to produce the records, but the employer was not able to find them. The deadline for submitting the supporting documentation had passed and Sam assumed that the records would never be located. When Georgina Murphy called the night before the hearing to say that she had found the records, Sam knew that he would have to get instructions from the employer, Paul Curran.

The Employer

Paul Curran started Maple Leaf Textiles Co. in 1990. The company manufactured bed, table and kitchen linens, including duvet covers, sheets, pillow slips, bed skirts, tablecloths, placemats, napkins, dishtowels and curtains. Its factory in Mississauga employed 110 employees, approximately 75 women and 45 men. One of the bed linen product lines required the use of strong dyes that led to a series of complaints from workers. Use of the product was discontinued in 2002 for a variety of reasons including market trends and cost. Sonia Paster was one of several employees who claimed entitlement for benefits due to work-related conditions related to the chemicals in the dyes. After she filed her appeal, Sam told Paul that he had undertaken to locate and provide records of air quality and other health and safety-related tests conducted during the time Sonia worked at the factory. Paul made diligent efforts to find them but was unsuccessful. When Sam announced that Georgina Murphy, one of the employer's witnesses, had discovered the records the night before the hearing, Paul told him not to disclose the documents under any circumstances.

The Employer's Witness

Georgina Murphy was employed as a health and safety production supervisor at Maple Leaf Textiles Co. for the last eight years. When she was called as a witness in the appeal hearing, she spent hours searching through the company's computer files for information about the air quality testing conducted from 1998 – 2001. Her boss, Paul Curran, told her that the records had most likely been lost or destroyed, but she was able to find them in the company's computer files the night before the hearing. When she called Sam to let him know, he told her that he would have to seek instructions from Paul about what to do with the late evidence.

The Worker

Sonia Paster got a job with Maple Leaf Textile Co. in 1998 after she quit high school. She was employed in the factory for three years, but in 2001 until she developed dermatitis and respiratory problems multiple chemical sensitivity (MCS). Convinced that the chemicals in the fabric dyes were causing her condition, she filed a claim for benefits with the Workplace Safety and Insurance Board. On May 5, 2002, the Appeals Resolution Officer denied her entitlement to benefits for a "work-related injury or illness as a result of an occupational exposure." In 2009, she decided to appeal the decision and hired a paralegal to represent her before WSIAT.

The Late Evidence

The records of air quality and other health and safety-related tests performed at the factory from 1998 – 2001 indicated that the level of air pollutants was high and could cause adverse health effects including skin and respiratory ailments in workers exposed to the chemicals.

Conclusion

Sam was unsure of how he could follow Paul Curran's instructions and represent his client effectively at the appeal hearing without compromising his professional obligations.