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Personal Injury Case Study

The Offer of Employment

Bernard King was in the courtroom at 9:40 a.m. on October 8, 2010, the seventh day of the trial when his client's wife, Sandra arrived, handed him a letter, and asked when he intended to use it as evidence in support of her husband's claim for damages. When Bernard said he had never seen the letter before, Sandra insisted that she had given it to him when he agreed to represent her husband, Neil, in his personal injury lawsuit. Although the letter was favourable to his client's position, Bernard suspected that Sandra had fabricated it. He had less than 20 minutes to decide what to do with the new evidence.

The Lawyer

Bernard King was called to the bar in 1992 and spent the majority of his career representing plaintiffs in personal injury litigation matters. He had been a partner in the London, Ontario firm of Westover Murray LLP for four years when he took Neil's case. In the seven years that it took for the case to come to trial, no one had mentioned the letter that Sandra placed in front of Bernard in the courtroom.

The Client

Neil was forty, and married with two children, aged eight and eleven, when he was injured in two car accidents – one on January 5, 2003 and the other on March 8, 2003. The two other drivers were clearly at fault, but doctors could not be certain as to which injuries were caused by which accident. Neil claimed to have a mild head injury, and was chronically fatigued and in pain. He was unable to concentrate and suffered short term memory loss. His wife, Sandra, and his children confirmed that Neil was like a different person after the accidents. The severity of his injuries was such that there was no question that he met the threshold for serious and permanent impairment.

Before he was injured, Neil had been employed as a loans officer in a bank for approximately five years. When the bank decided to close the branch at the end of 2002, his position was terminated. He expected to be hired at another branch, but before he received an offer, he was injured in the two accidents.

The Trial

The key issues in the trial were the division of liability between the two defendants and the amount of damages that should be awarded to Neil for future income. After the doctors testified, Bernard then called Neil to give evidence about the type of work that he did when he was employed by the bank and his expectations of obtaining another job after being terminated. There was no proof that Neil had any job prospects prior to the first accident. The weakness of

his evidence on the issue soon became clear under cross-examination by the other side. At the end of the day, his wife, Sandra, who was making a claim under the *Family Law Act* for loss of care, guidance, and companionship, looked frustrated and upset.

The Letter

The letter that Sandra wanted Bernard to introduce in evidence was from a financial company. It was dated January 3, 2003 and contained an offer of employment at a salary higher than the amount that Neil was making at the bank. The letter did not provide details as to a starting date, or any other terms or conditions of employment. Bernard was taken aback when Sandra claimed that the letter was in the file, because in the seven years since he was retained to handle the matter, he had never seen the document or heard that Neil received an offer of employment.

Conclusion

Bernard did not have time to verify the authenticity of the letter. The counsel for the defendants had arrived in the courtroom and the trial was about to resume. Under pressure from his client's wife, he needed to quickly decide what his obligations were with respect to the new evidence.