

## Navigating the minefield of workplace depression

Written by Jennifer Brown  
14 May 2012

When former Globe and Mail reporter Jan Wong became ill with depression, she says at first she was in denial about her state of mental health. But when her doctor told her she was in fact depressed and she filed for sick leave, it sparked a standoff with her employer that ended in a costly legal battle.

“From the start it was mishandled; it never had to happen like this,” says Wong who last week launched her book, *Out of the Blue, A Memoir of Workplace Depression, Recovery, Redemption and Yes, Happiness*. “The first fundamental point I think is employers are not educated about mental illness and they are very last century about how they approach the problem. I think there’s a lot of ignorance also with employees.”



The book covers the evolution of Wong’s depression, which started after she wrote a story in 2006 about the shootings at Dawson College in Montreal in which she suggested Quebec’s linguistic politics created a context for the violence. She became the target of hate mail and even a death threat delivered to her workplace. The Globe also published an editorial expressing regret for the controversial portion of Wong’s article.

Wong felt her employer failed to support her. In fact, when the death threat arrived at The Globe’s offices, she says a security guard was prevented from calling police — something she says is standard protocol. As a result the stress caused her to fall into clinical depression. She then became involved in a struggle with her newspaper and its insurer over the handling of her sick leave benefits. She was eventually fired.

“I think when it comes to cases like this many people will just go away. Companies may lose an employee who is productive. In cold financial terms I was an asset and they turned me into a liability,” Wong tells InHouse. “I became a very expensive liability.”

Wong’s case never made it to arbitration; rather it was resolved through marathon mediation sessions handled on her behalf by her union’s lawyer. She cannot reveal details of the financial settlement from The Globe, but she insisted they acknowledge in writing that she was in fact depressed and that she not be bound by a confidentiality agreement.

“The sticking point was the gag order, I just couldn’t agree to confidentiality,” says Wong. “I wanted to go to arbitration because it is made public. It was very hard because I was deeply depressed when all of this was going on. In the middle of a mediation, my union lawyer was yelling at me — he stood up, screamed at me, and said, ‘you’re insane.’ I said, ‘I guess I am insane because I can’t accept this offer.’ The mediator interjected and told me ‘No, you’re not insane.’”

As soon as she settled with The Globe, she sued Manulife Financial, the company's insurer. Wong says she stopped receiving sick pay just before Christmas 2006. One of her major battles was over how the benefits were managed. At one point she was followed by a security company that had been hired to collect video evidence to help determine if she appeared to be depressed.

"I'd been off work since early October and ordered back to work after six weeks. I started getting letters saying I had to be at work or else. I was supposed to get six months under the contract but was told by Manulife the maximum was six weeks," she says.

Employment law experts say the issue of accommodating depressive disorders is a complicated one, but addressing the problem properly has to involve both parties providing information in a timely manner. Too often employees hide their problem and then employers feel blindsided.

"I think understanding depression is part of it, but it's also a two-way street. Both parties have a duty in the process and that includes an employee's duty to communicate and raise the issue of accommodation. That doesn't mean the employer can be willfully blind," says Shana French of Sherrard Kuzz LLP.

Often, employers will receive notification from a family physician that an employee is sick and is required to go on disability. If that comes out of the blue, the employer may go on the defensive.

"Depression in terms of a diagnosis can be relatively and easily communicated to an employer, if that is required. I don't think that's the issue — the issues arise when there is a lack of disclosure and I think that's where more problems come up now," says Hendrik Nieuwland of Shields O'Donnell MacKillop LLP. "Usually where disputes occur is with competing diagnosis — a family physician may say it's depression and a mental-health expert may say otherwise."

The employee also has the ability to provide information to the employer before reaching the point where a leave is required.

"Often they just provide a doctor's note saying the person can't work for six months. That doesn't help anyone understand the role the employer can play. They can provide resources like [employee assistance plans] or specialists," says French.

She says Wong's clash with her employer is an example of how workplace depression claims can quickly spin out of control.

"We see that a lot where the claims of stress and depression have come on the heels of performance management or conflict with supervisors," says French. "It puts the employer in a position where they say, 'hold on, is this an excuse or a reason?' No one is trying to be Machiavellian but at the same time everyone does have a responsibility to manage the workplace and if everyone requested accommodation every time they were disciplined it would be a rather unwieldy world."

French says there's also "a lot of fatigue" with employers around the over-use of terms like depression and stress. She cites *Crowley v. Liquor Control Board of Ontario*, which states stress in and of itself is not considered a disability.

"People muddle up all those terms and they lose a little bit of their impact," says French.

But, employers are cautioned not to dismiss employees without first investigating fully, given *ADGA Group Consulting v. Lane* in which the Human Rights Tribunal of Ontario awarded \$80,000 to an individual who had

bipolar disorder. The complaint arose out of the dismissal of an employee with bipolar disorder, eight days after he started working with ADGA Group Consulting Inc. The tribunal held that ADGA had failed to turn its mind to the prospect of accommodating the employee, resulting in a finding of discrimination.

“So we say to employers, make sure you have a process in place to show you’re exploring what’s going on,” says French.

Nieuwland says some large organizations manage workplace depression and disability claims well by having a separate occupational health department that liaises with the employee and a third-party insurer.

“That means HR and line supervisors don’t get access to the information about the mental illness so there’s a Chinese wall there. It removes decision-making about how to deal with the mental illness from line supervisors and HR and helps protect privacy.”

Wong says she feels HR was not on her side in her battle with her employer because the tension over the story she wrote continued even after she submitted a sick note requesting leave for depression.

“Once I’m sick and send in a sick note everything else should stop. I think it’s where a lot of companies fall down — they keep going with whatever the problem is instead of just stopping. HR should have called a halt to all that internal back and forth about the story. HR must play a more neutral function and cannot be the stick that management uses to beat the employee.”

The Globe and Mail did not respond by time of posting, but watch for updates to this story.