

Workers' mental health is employers' responsibility

By **GERRY BELLETT, Vancouver Sun September 30, 2010**

A perfect legal storm is brewing for Canadian employers who inflict mental injury upon their employees, an expert on workplace mental illness said Thursday.

Martin Shain, a lawyer and researcher who holds a number of posts at universities, was speaking to employers at a Vancouver meeting organized by the Mental Health Commission of Canada.

On Thursday the commission released Shain's report, *Tracking the Perfect Legal Storm*, which found that damage awards for mental injury caused in the workplace have increased by as much as 700 per cent within the last five years.

It warns that more attention is being paid to mental-health protection at work and points to emerging responsibilities for employers to provide a psychologically safe workplace.

"It's now a duty for employers to provide a psychologically safe workplace. Employers have to take every reasonable step to protect the mental health of employees," said Shain.

"The only reason we are talking about it at all is that mental injury is something that can be prevented," he said.

Shain said a finding of mental injury does not require the level of proof that covers mental illness. In some cases it would not even require medical evidence, he said.

"When a person is complaining of being depressed, anxious or burnt out because of things done to them at work, the threshold they have to cross to show legal liability is not the medical threshold. They can claim it is something that affects them from day to day or prevents them going about their normal activities — and that's a far cry from the medical definition of depression," he said.

Shain said the definition of a mental injury was a "reasonably foreseeable and significant harm to a fellow worker's mental health resulting in their temporary or long-term inability to function as normal at work or at home."

"It means that if you as a normal person can foresee your conduct can lead to mental injury, you are opening the door to liability," he said.

Some members of the audience disagreed with his assertion that, for companies, the "odds of running afoul of the law were increasing daily."

Shain agreed that while the issue had not been decided in the law of torts — law regarding injury that is dealt with in superior courts — there were other commissions and tribunals that had made rulings in favour of persons claiming mental injury.