

BY GARY SULLIVAN

# A landmark discrimination case, or, why Alan Labonte turned down \$3 million

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In June 1991, Alan Labonte, executive director of Hutchins & Wheeler, the second oldest law firm in Boston, was diagnosed with multiple sclerosis. He had, in just over a year with the firm, proven invaluable, helping to keep morale—and the bottom line—from sinking in the wake of a series of layoffs and firings. The venerable law firm was having transition pains and Labonte understood the need for change. His first year, he received a higher raise than anyone in the firm—plus a \$4,000 Christmas bonus, despite his personal protestations that he was still new.

Labonte felt secure enough to disclose his diagnosis right away. Although he received sympathy and offers of help from his superiors, when the time came for accommodations to be made, the sympathy headed south.

“It wouldn’t have taken much,” Labonte told me one day last fall. “They could have moved my office closer to the elevator. They could have gotten me a little scooter.”

Instead, members of the firm’s management committee began to avoid Labonte, treating him awkwardly when interaction couldn’t be avoided. In January 1992, less than six months after disclosing his MS, he was fired without notice.

Labonte sought legal advice. David Rapaport took Labonte’s case in February 1992. He confirmed that Hutchins & Wheeler could have made inexpensive adjustments to help Labonte manage his MS fatigue. Labonte could have been offered a more flexible schedule and permission to do certain work at home on his PC. Hutchins & Wheeler had Labonte managing the firm’s former offices, which were being occupied by sub-tenants. “That had nothing to do with my job, running the law firm,” Labonte said, “and could have been transferred to somebody else.”

“I was appalled at Alan’s treatment by H&W,” Rapaport said. “But I hadn’t had much previous experience with disability discrimination cases,” he admitted. “At that time, the Americans



Alan Labonte (left) and David Rapaport meet for coffee in Boston

with Disabilities Act was just taking effect. Massachusetts had had its own version of the ADA in place since the mid-80s, but it wasn't very well known. There weren't many cases that had been tried."

Labonte's initial approach was to work toward an amicable settlement. "David likes to say that I am too trusting of people," Labonte said. "Unfortunately, that turned out to be true in this instance."

For the next several months, right up until the deadline for filing a suit, Hutchins & Wheeler flat-out refused to talk with Labonte. "They gave Alan no choice," Rapaport said. "We filed suit on September 11, 1992." The trial began in August 1994.

### Labonte v. Hutchins & Wheeler

The trial went so poorly for Hutchins & Wheeler that one day the judge called both attorneys into her chambers. She tried to persuade H&W's lawyer to enter into settlement discussions. Labonte asked for \$750,000. Hutchins & Wheeler offered \$100,000. The trial continued.

In 1994, the jury awarded Labonte \$3.5 million in retroactive pay and other damages. It was the highest jury award of its type in Massachusetts state history. Word of the victory spread quickly via several Boston newspapers and *Lawyers Weekly*.

But it wasn't over yet.

There were still the post-trial motions and the possibility of an appeal. In December 1995, H&W pressed Labonte to agree to a settlement of \$500,000, but

he remained firm, citing the jury's verdict.

Then H&W hit Labonte with a curve ball he hadn't expected: They submitted an argument based on a previous case, **August v. Offices Unlimited, Inc.**, that implied that people with disabilities forfeited their rights under the ADA if they applied for disability insurance. Labonte had received disability payments.

In the midst of this, Labonte did something most of us would probably have avoided, given the mounting levels of stress: He made several humanitarian trips to war-torn Bosnia.

After he returned from his third trip, the judge denied H&W's post-trial motions. The verdict stood. And H&W prepared an appeal to Massachusetts Supreme Judicial Court.

Preparing for another onslaught, Rapaport discovered another case involving an employee with MS: **D'Aprile v. Fleet Services Corp.** A senior system support analyst for Fleet Services was diagnosed with MS, and worked for two months on a

flexible, part-time schedule, using her vacation time as a de facto accommodation. When she ran out of vacation time, Fleet fired her and she applied for disability.

In that trial, Fleet claimed that D'Aprile could not sue for discrimination because she had applied for disability. But the First Circuit Court decided in her favor because she had "demonstrated her ability to work with the accommodation requested."

Like D'Aprile, Labonte had claimed that he was able to do his job with reasonable accommodations.

Hutchins & Wheeler then offered Labonte a settlement: \$1,750,000. Labonte refused. Next they offered \$3 million.

Labonte slept on it. Then he declined.

"If I had taken the settlement," he said, "I would never have been able to tell my story, and I would have lost the opportunity to set a legal precedent for other people like me."

In the end, Labonte's claim of handicapped discrimination was upheld and he was awarded about \$2 million dollars in damages. The award, even though it was a third less than the largest offer, packed a legal and symbolic punch: Failing to offer reasonable accommodations could cost an employer a bundle and seriously

damage its reputation and standing in the community.

### Looking back

This fall I asked Labonte if there was anything he now wished he'd done differently.

"I should have gotten some sound legal advice from someone like David first," he said. "You have to prepare your employer very carefully. You've got to be strong, of course, but not obnoxious—the 'reasonable' in reasonable accommodations applies to the employee as well as employer.

"I should have asked, in writing, for specific accommodations, with explanations of why I needed them. Expectations need to be clearly outlined in writing—from both sides. Communication is key. Communication, honesty, and integrity. If H&W had told me that they had reservations about my ability to do the job, I wouldn't have moved my family to the Boston area—I'd have worked out an amicable agreement with them instead, and would have applied for coverage under the firm's long-term disability plan. It's critical, from both a financial and emotional perspective, for someone with MS to have ongoing health insurance, preferably with prescription drug coverage."

In the years that followed, Labonte pursued a doctorate degree, and became a member of the faculty at Boston University's School of Management. He currently serves as a senior research associate. He and his wife, Lora, live in suburban Boston. ■

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Gary Sullivan is managing editor of this magazine.

### A million reasons

In 2006, Hot House Press published Alan Labonte's **A Million Reasons: Why I Fought for the Rights of the Disabled**, a comprehensive account of his suit and his reasons for turning down \$3 million. Available for \$17.16 from [Amazon.com](https://www.amazon.com) or for \$26 directly from the publisher (call 781-383-8360).