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SCC Upholds Decision of the Alberta Human Rights Commission that Dismissal of Cocaine-Addicted Worker was not Discriminatory

Lawson Lundell's Labour and Employment Group

In [Stewart v. Elk Valley Coal Corp.](#), 2017 SCC 30, the Supreme Court of Canada upheld a decision of the Alberta Human Rights Tribunal which found that the termination of an employee in a safety-sensitive environment who tested positive for cocaine after a workplace accident did not constitute unlawful discrimination.

Important takeaways from the decision include that:

- where the breach of a workplace policy leads to the dismissal of an employee and the employee had the capacity to comply with the policy, the mere existence of a protected ground does not establish *prima facie* discrimination. In order to establish *prima facie* discrimination, it would have to be shown that the failure of the employee to comply with the policy was related to a protected ground; and
- letters of termination need to be carefully drafted. In this case, the employer's termination letter served as evidence that the employee's dismissal was for breach of a workplace policy and not because of his addiction.

Background

Mr. Stewart worked as a loader driver at a mine operated by the Elk Valley Coal Corporation ("Elk Valley"). The mine operations were dangerous and safety was a priority for both Elk Valley and its employees. To ensure safety, Elk Valley implemented a drug and alcohol policy (the "Policy") that required employees to disclose any addiction issues. If an employee disclosed a dependence issue before an accident occurred, he or she would be offered treatment. However, if he or she failed to disclose such an issue, was involved in an incident and tested positive for drugs, he or she would have his or her employment terminated.

Mr. Stewart did not tell Elk Valley that he was using cocaine on his days off. He tested positive for cocaine following a workplace accident and later stated in a meeting with his employer that he thought he was addicted to cocaine. Elk Valley then terminated his employment in

accordance with the Policy. Mr. Stewart's union argued that he was terminated because of his addiction contrary to the Alberta human rights legislation.

Under the legislation, to establish a *prima facie* case of discrimination, a complainant must show: (1) that he or she has a characteristic that is protected from discrimination; (2) that he or she experienced an adverse impact; and (3) that the protected characteristic was a factor in the adverse impact.

The Tribunal agreed that Mr. Stewart's addiction was a disability protected under Alberta's human rights legislation. It also found that the termination of his employment constituted adverse treatment by Elk Valley. However, it concluded that Mr. Stewart was terminated for breaching the Policy rather than for his addiction. In its view, Mr. Stewart was also not adversely impacted by the Policy because he had the capacity to comply with its terms. The Alberta Court of Queen's Bench and the Alberta Court of Appeal upheld the Tribunal's decision that there was no *prima facie* discrimination.

Judgement

The Supreme Court of Canada dismissed Mr. Stewart's appeal. Applying a deferential standard of review, the Court held that it was reasonable for the Tribunal to conclude that addiction was not a factor in the termination of Mr. Stewart's employment. There was evidence capable of supporting the Tribunal's conclusion that the reason for his dismissal was not addiction, but breach of the Policy. In particular, the termination letter provided to Mr. Stewart emphasized his breach of the Policy.

Mr. Stewart argued that his addiction was a factor in his dismissal because denial was a part of his addiction, and this denial prevented him from disclosing his addiction prior to the accident. The Court held that, in some cases, a person with an addiction may be capable of following workplace rules, while in other cases the addiction may deprive a person of such capacity. In the latter case, a breach of the rules will be inextricably connected with the addiction. Any connection between a protected characteristic and an adverse impact will depend on the facts and must be assessed on a case-by-case basis based on evidence.

The Tribunal rejected Mr. Stewart's denial argument on the basis that he knew he should not take drugs before working and had the ability to decide not to take them and to disclose his drug use to Elk Valley. The Court found no reason to overturn the Tribunal's decision.

The Court commented on two other points raised by the parties. It emphasized that a finding of stereotyping or arbitrariness is not a stand-alone requirement for proving *prima facie* discrimination. It also held that there was no need to alter the settled view that a protected ground need only be "a factor" rather than "a significant" factor giving rise to adverse treatment for a finding of *prima facie* discrimination.

Since the Tribunal's decision that *prima facie* discrimination was not established was reasonable, it was unnecessary for the Court to consider whether Mr. Stewart was reasonably accommodated.

With thanks to articling student Jocelyn McAdam for her assistance.

For more information, please contact a member of our [Labour and Employment Group](#).

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