

## Feature

# Terminating Employees with Drug Addictions

*Avoid human rights violations*

The Supreme Court of Canada has recently released their decision in the *Steward v Elk Valley Coal Corp.* case. This case addresses the balance between competing obligations placed on employers to provide a safe workplace in which their employees do not perform safety-sensitive work while impaired, and to avoid discriminating against people with drug addictions, which is considered a disability under human rights legislation.

This decision highlights the case-specific nature of this issue. It shows that terminating the employment of a person who has an addiction to drugs is legally possible, but avoiding a human rights violation will require a well-drafted policy and a large degree of care to ensure that the reason for termination is not discriminatory.

The employer in this case, Elk Valley Coal Corp., had put in place a policy requiring employees to disclose any drug or alcohol dependence or addiction issues to Elk Valley before a drug-related incident occurred. An employee who disclosed an addiction issue would be offered treatment. If an employee failed to disclose an addiction and was subsequently involved in an incident and tested positive for drugs, their employment would be terminated.

The plaintiff employee, Ian Stewart, worked in a safety-sensitive position driving a loader in Elk Valley's mine. Stewart was involved in an incident and tested positive for drugs. He later said he was addicted to cocaine, but that he had been in denial about his addiction prior to the accident. Elk Valley terminated his employment in accordance with its policy and Stewart challenged the termination as having discriminated against him on the grounds of disability.

The Alberta Human Rights Tribunal who first heard the case found that Stewart had not been discriminated against, as the reason for the termination was breach of the company policy, not his addiction. The Court of Queen's Bench and Court of Appeal both upheld that finding. The majority of the Supreme Court deferred to the Tribunal's decision and dismissed Stewart's appeal.

## The Test for Discrimination

In order to bring a claim for discrimination, an employee must first make out a *prima facie* case of discrimination by showing that (1) they have a characteristic protected from discrimination, (2) they experienced an adverse impact, and (3) the protected characteristic was a factor in the adverse impact. If successful, the onus shifts to the employer to show that it accommodated the employee to the point of undue hardship.

The majority found that that *prima facie* discrimination had not been made out. While Stewart had a characteristic protected from discrimination (since drug addiction is considered a disability) and he had experienced an adverse impact (the termination of his employment), the majority upheld the Tribunal's finding that despite his addiction, Stewart had the ability to decide not to take drugs and the capacity to disclose his drug use to Elk Valley. Therefore, the reason for terminating Stewart's employment was because he breached the policy, not because of his addiction.



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### Feature continued

Because Stewart had not made out a case for *prima facie* discrimination, the majority did not need to consider whether he had been accommodated to the point of undue hardship.

The dissenting decisions, on the other hand, found that a drug addiction would by definition diminish Stewart's ability to decide not to take drugs. As such, Stewart's disability was a factor in the adverse impact, thus establishing a *prima facie* case of discrimination and requiring Elk Valley to accommodate him to the point of undue hardship. Two of the dissenting judges found that Elk Valley had accommodated him to the point of undue hardship, but one judge found it did not, and would have held that Stewart's rights had been violated.

### Take-Away for Employers

In order to have the ability to terminate employees with addictions for drug use in the workplace, the addiction cannot be a factor in the termination. This means that the reason for termination should be breach of company policy, not use of drugs. However, in order to terminate employees with drug addictions for breach of company policy, ability to comply with the policy must not be diminished by addiction, even if the person is in denial about their addiction. As the majority cautioned in Elk Valley, "if an employee fails to comply with a workplace policy for a reason related to addiction, the employer would be unable to sanction him in any way, without potentially violating human rights legislation."

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