

Recognizing Drug Addiction as a Ground for Discrimination under Human Rights Legislation – Stewart v. Elk Valley Coal Corp. 2017 SCC 30

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The Supreme Court of Canada released its decision in *Stewart v. Elk Valley Coal Corp.* (2017 SCC 30) earlier this year, a landmark case concerning the current framework for determining discrimination in the workplace. The majority upheld the decision of the Alberta Human Rights Tribunal that an employer can terminate an employee for breaching a drug or alcohol policy even if the employee has an addiction. However, there has been somewhat of a backlash surrounding the decision, as many feel that Justice Gascon's dissenting judgment has a more accurate understanding of addiction and its stigmatization in the workplace.

Mr. Ian Stewart worked as a loader driver in an Alberta coal mine. His employer, Elk Valley Coal Corp., had a drug and alcohol policy requiring employees to disclose any dependence or addiction. The policy provided that if an employee disclosed an addiction on their own accord, they would be offered treatment. However, if an employee failed to disclose and tested positive after an accident occurred, their employment would be terminated.

Mr. Stewart was involved in an accident involving his loader, was subjected to a drug test and tested positive for cocaine use. Subsequently, he disclosed to his employer that he was addicted to cocaine. Immediately following this disclosure, Stewart's employment was terminated pursuant to the policy. Stewart made an application to the Alberta Human Rights Tribunal and argued that his employer discriminated against him on the basis of his drug addiction, a recognized disability under human rights legislation. However, the Tribunal found that the termination did not amount to *prima facie* discrimination, and the decision was upheld by the Alberta Court of Queen's Bench and the Court of Appeal.

The Supreme Court of Canada dismissed the appeal in an 8-1 decision, though there was some disagreement on issues within the discrimination analysis. Chief Justice McLachlin led the majority decision, which found that the Tribunal had correctly concluded that no *prima facie* discrimination existed. McLachlin recalled the test for *prima facie* discrimination, which required the complainant to show that (1) he had a characteristic protected by human rights legislation; (2) he experienced differential treatment; and (3) the differential treatment was a result of the disability.

The majority concluded that the third step was not satisfied. The court held that Stewart had the capacity to comply with the policy, but failed to do so. The court therefore found the decision of the Tribunal to be reasonable, as an employee would have been terminated whether he was an addict or a casual user.

In contrast, the minority found that the termination was *prima facie* discrimination, but that the discrimination was justified because any act to further accommodate Stewart would reach the point of undue hardship on the employer.

Justice Gascon stated in his dissenting judgment that the policy itself discriminated against individuals suffering from drug addictions. He addressed stigmas surrounding drug dependence that impair the ability of courts to assess these discrimination claims, like the belief that those suffering from it are to blame for

their misfortunes, or that their concerns are less credible than those suffering with other disabilities. He also stressed that those suffering from addiction are often unaware of their dependencies, and as a result, Stewart would be unable to self-disclose if he was unaware of his addiction until after the drug test had been conducted.

This decision has served as a point of contention in the legal community, with some applauding its practical approach to workplace safety policies requiring self-reporting. Others are concerned with the chilling effect of the majority's narrow application of the discrimination test and of its failure to consider the intricacies of addiction. This friction highlights a problem that Canadian employers continue to face; finding a balance between creating an efficient safety policy and adhering to human rights legislation in light of addiction.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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