
ADDICTION NO EXCUSE: THEFT WARRANTS DISMISSAL

September 19, 2008

The BC Court of Appeal released the latest – though likely not last – decision in the case of an alcoholic liquor store manager who was fired for repeatedly and routinely stealing alcohol from the store he managed.

The decision considers whether an employer must take into account human rights legislation when disciplining a disabled employee who commits a workplace offence. In this case, the disability was the employee's addiction to alcohol. The Court answered the pleas of many employers in holding that:

The *Human Rights Code* was not designed to prevent employers from dismissing an employee who has committed a crime related to his or her employment.

The decision concludes that conduct is only discriminatory if its effect is to impose on a disabled person sanctions or obligations not imposed on other employees. Thus, the employer did not discriminate here because it treated the alcoholic employee the same as it would have treated any other employee it caught stealing: it fired him.

In the words of the Court, it was “irrelevant” that his “conduct may have been influenced by his alcohol dependency” because his “admitted dependency played no part in the employer's decision to terminate his employment.”

Earlier cases have focussed on whether some misconduct (i.e., theft of time) was caused by a disability (i.e., depression). This was the “hybrid” approach where employers were required to determine whether otherwise blameworthy conduct was caused, at least in part, by a disability.

The Court of Appeal does not say what should become of the “hybrid” analysis. We have earlier advised clients to apply the “hybrid” analysis with caution and sensitivity. We advocate a similar approach to this decision, since it may well not be the final word on this emerging area of law.

The decision of the Court of Appeal was not unanimous and, given the strong dissent by Madam Justice Kirkpatrick, we would not be surprised if the Supreme Court of Canada hears a further appeal in this now decade-old saga.

If you have questions regarding this bulletin, or if you wish to have information on any other employment or labour law issue, please do not hesitate to contact any member of our firm. Lawyer contact information can be obtained by telephoning us at (604) 806-0922 or visiting our website at www.ropergreyell.com.

* Every effort has been made to ensure the accuracy of this bulletin. The comments, however, are necessarily of a general nature. Clients and other interested parties are urged to seek specific advice on matters of concern and not to rely solely on the text of this bulletin. *