

The Supreme Court of Canada grants leave to appeal in drug and alcohol policy matter

DENTONS

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Once again, the issue of drug and alcohol testing and policies will be subject to appeal; but this time before the Supreme Court of Canada, as it recently granted leave to appeal in *Stewart v. Elk Valley Coal Corporation et al.* This case (**2015 ABCA 225**), released in the summer of 2015, gave employers some much needed comfort regarding their ability to discipline or terminate employees in safety sensitive positions involved in a work place incident while under the influence of drugs or alcohol. The case also caused employers to review their drug and alcohol policies to ensure they contained provisions allowing employees to self-report and seek rehabilitative help for their addictions prior to a work place accident, without fear of discipline. That aspect of the policy was a key consideration in that decision.

This case involved an employee who was terminated after testing positive for cocaine following a workplace incident where a loader truck he was operating struck another truck. The employer had a drug and alcohol policy in place which gave employees with a dependency or addiction the ability to seek rehabilitation without fear of discipline, as long as the employee did so prior to a workplace incident. In this instance, the employee had not disclosed that he had a disability prior to the workplace incident. The employer terminated the employee and the Union filed a complaint with the Alberta Human Rights Commission on his behalf, alleging discrimination on the grounds that he was disabled due to his drug addiction.

The Tribunal held that there was no connection between the employee's disability and his termination. The employee was not fired because of his disability, but because he had used drugs, was impaired at work, and had not disclosed his drug use in advance. The Tribunal also held that the employer had accommodated to the point of undue hardship by giving employees the opportunity to self-report and undergo rehabilitation. On appeal, the Court of Appeal affirmed the Tribunal's decision and agreed that the employee's disability was not a factor in his termination.

This decision was welcomed, particularly by those in the construction industry where drug and alcohol issues are of key importance. It will be interesting to see what happens when the Supreme Court of Canada hears this appeal.

Your Key Contacts



Cristina Wendel

Partner, Edmonton

D +1 780 423 7353

cristina.wendel@dentons.com