

CASE LAW UPDATE

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Ontario (Director, Disability Support Program) v. Tranchemontagne

2010 ONCA 593, Released 16 September 2010

Human Rights – Test for Discriminatory Legislation

The Court of Appeal affirmed the holding of both the Social Benefit Tribunal and the Divisional Court that the prohibition on providing benefits to those disabled solely due to addiction in s. 5(2) of the *Ontario Disability Support Program Act* violated the *Human Rights Code*.

However, the Court of Appeal rejected the Divisional Court's proposed new test for when legislation would be found to be discriminatory. The new test would have required an applicant to demonstrate a *prima facie* case. The respondent would then have to demonstrate that the distinction does not create a disadvantage by perpetuating prejudice or stereotyping, or in the alternative, establish a statutory defence.

The Court held that this improperly reversed an applicant's onus and improperly ignored a key element of the test for discrimination, namely that a distinction creates a disadvantage by perpetuating prejudice or stereotyping.

While the Court disagreed with the Divisional Court, it found that here was sufficient evidence to support a finding of discrimination, as there was evidence that substance addicts and welfare recipients were subject to stigma and prejudice and there was no explanation in the legislation why those solely impaired by substance abuse could be excluded.

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