

Case Law Update: Ontario (Director, Disability Support Program) v. Tranchemontagne

October 20, 2010

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 there 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.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035