

NL Supreme Court Undue Hardship Can Arise from Inability to Measure Cannabis Impairment

April 02, 2019

Even before the legalization of cannabis in Canada, employers were in the throes of dealing with the impact of medically prescribed cannabis in the workplace. This has been particularly challenging for safety-sensitive employers struggling to strike the delicate balance between both safety and human rights obligations.

The recent decision from the Newfoundland and Labrador Supreme Court in **International Brotherhood of Electrical Workers, Local 1620 v. Lower Churchill Transmission Construction Employers' Association Inc.**¹ (Lower Churchill) is an important decision on the limits of accommodation for employees who may be using medically prescribed cannabis in a safety-sensitive workplace.

Background

The employee, a labourer of more than 30 years, had been suffering from chronic pain **due to Crohn's disease and osteoarthritis for a decade or more. Despite attempting** several conventional therapies and medications without success, he was eventually prescribed medical cannabis which provided him with greater pain relief.

The employee disclosed his use of medical cannabis, after which he was denied employment on the Lower Churchill Transmission Construction Project because of concerns regarding the potential for impairment in the performance of safety-sensitive duties. A grievance was subsequently filed; the union took the position that the refusal was discriminatory and contrary to both the collective agreement and the human rights legislation.

Both the union and the employer agreed that the employee had a disability which required cannabis to effectively treat. It was also accepted that there were no non-safety-sensitive positions available.

Arbitrator and Supreme Court Decisions

At arbitration, the primary question was whether the employer had met its duty to accommodate the employee's disability without undue hardship.

There was competing expert evidence from general practitioners, pharmacologists, toxicologists and pain management specialists as to the effects of cannabis and how long any impairment might last. The arbitrator found that medical cannabis can impair the ability of a worker to function safely in a safety-sensitive environment, that this impairment can last up to 24 hours, that the employee may be unable to determine that they remain impaired, and that there are no testing methods available to accurately determine impairment from cannabis use in the workplace.

As such, the arbitrator concluded that undue hardship would arise if the employer were to put the employee to work. In other words, because the employer could not adequately **measure impairment – both in terms of effect and duration – it could not appropriately** manage the safety risk and thus, there would be an unacceptable increased safety risk if the employee were to return to the workplace.

In dismissing the judicial review application, Justice Daniel M. Boone found that the **arbitrator's findings were within the range of reasonable outcomes. The union argued** that the employer was obligated to hire the employee unless they could demonstrate an impairment. On that point, Justice Boone affirmed that once the issue of possible impairment had been raised, the employer was reasonably entitled to request medical **information which demonstrated the employee's ability to work safely. There was no** obligation on the part of the employer to hire the employee to assess the risk first-hand.

Takeaway

As there are relatively few reported decisions on this issue, the Lower Churchill decision will no doubt be of interest, and may well be of some persuasive value in future **decisions as they relate the limitations associated with an employer's duty to** accommodate when dealing with an inability to measure and mitigate the impairment associated with medically prescribed cannabis.

1 2019 NLSC 48

By

Odessa O'Dell

Expertise

Labour & Employment

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices**Calgary**

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.