

ONA WINS



SUMMARY OF ANOTHER SUCCESS AS YOUR UNION STRIVES TO IMPROVE YOUR WORKING CONDITIONS

Two Substantial ONA Wins at Divisional Court will Protect Members with Addictions

ONA has recently achieved two significant successes in Ontario's Divisional Court, which affirm and protect the human rights of ONA members with addictions.

Whether or not employers are entitled to discipline or terminate addicted employees for conduct that flows directly from their addiction is a question that has lacked consensus in case law. But after two arbitration decisions that, in ONA's view, failed to provide addicted members with meaningful human rights protection, we knew the time had come to fight this discrimination in court. Through these two cases, the courts asserted a robust, rights-affirming approach to this question, finding that to discipline an employee for behaviour that is caused by an addiction – such as theft or using drugs at work – constitutes discrimination.

In doing so, the courts rejected a narrow approach to addictions law, which required evidence of direct, intentional discrimination to find a violation of the Human Rights Code. Under this approach, arbitrators found that it is not discriminatory to apply the same rule to all employees – for example, a rule prohibiting theft – and to treat all employees the same if they violate this rule. This approach led to adverse outcomes for addicted members who were unable to comply with workplace rules because of their disability.

The courts' decisions affirm that it is not enough for an employer to simply treat everyone the same: if a rule has an adverse impact on a member because of their disability, the employer must adjust the application of that rule to accommodate the addicted member.

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