



Ontario Human Rights Tribunal upholds dismissal for medical marijuana use at work

The Ontario Human Rights Tribunal recently weighed in on the use of medical marijuana at work. In *Aitchison v. L & L Painting and Decorating Ltd.*, James Aitchison was employed as a seasonal painter by L & L Painting and Decorating Ltd., a commercial contractor involved in the restoration of high-rise buildings. As part of his role, Aitchison was required to perform work on a swing stage that was suspended on the outside of a building, 37 floors above the ground.

Aitchison's employment was terminated after he was caught smoking marijuana at work in violation of L & L Painting's zero tolerance policy. While Aitchison did not deny that he smoked marijuana on his work breaks, he maintained that he did so for medicinal purposes and that his supervisor was fully aware and condoned his use. Aitchison suffered from degenerative disc disease as a result of a workplace injury which caused chronic pain in his back and neck. Following his termination, Aitchison brought a human rights complaint alleging discrimination on the basis of disability contrary to the Human Rights Code.

The Human Rights Tribunal denied Aitchison's claim of discrimination concluding that there was "no absolute right to smoke marijuana at work regardless of whether it is used for medicinal purposes".

In reaching its conclusion, the Tribunal found that Aitchison's claim that his supervisor was aware and condoned his marijuana use was unreasonable given the obvious health and safety concerns inherent in his role. Further, the Tribunal found that there was no evidence that Aitchison had requested an accommodation with respect to medicinal marijuana use prior to the events that led to his termination. More importantly, the Tribunal found that L & L Painting was not obliged to accommodate Aitchison's preferred accommodation which presented an undue hardship in light of the significant health and safety concerns. The Vice Chair stated: "At risk of repeating myself, I cannot emphasize enough that the applicant worked on the 37th floor of an office tower on the outside of the building. If the applicant was impaired even in the slightest and it resulted in an accident, such as him dropping a tool, the consequences would be catastrophic."

While this decision is seemingly good news for employers who wish to restrict the use of medical marijuana by implementing zero tolerance policies, much of the decision focuses on the safety sensitive nature of Aitchison's position and the significant health and safety risks particular to his workplace. Zero tolerance policies in the workplace will continue to be subject to the duty to accommodate.