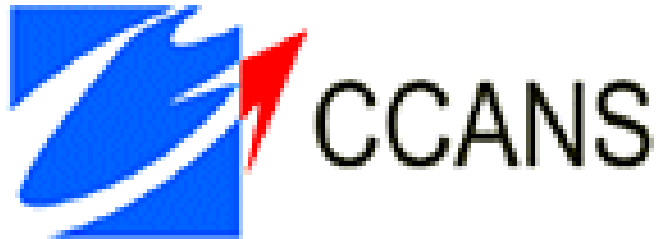


Legal Issues in Long-Term Care Facilities



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Presented by
Noella Martin, Q.C.
Will Russell

Presentation Outline

- Unsuitable Residents
- Marijuana in the Workplace
- Accommodating Learning Disabilities
- Updates:
 - Essential Services Legislation
 - Collective Bargaining
 - Precarious Workers

Unsuitable Residents

Regulations under the *Homes for Special Care Act* state:

15(5) The Administrator of the home for special care shall take whatever action is necessary to remove from the home any resident who, in the opinion of the inspector, is not a suitable person to be maintained in the home, and shall take whatever steps are necessary to place the resident in the type of accommodation recommended by the inspector.

Marijuana in the Workplace

- In April 2017, the Liberal government introduced legislation proposing that Canadians over 18 be allowed to buy and cultivate small amounts of marijuana for personal use.
- The government wants to have a legalized system in place by June 2018.

Marijuana in the Workplace

- *Task Force on Cannabis Legalization and Regulation*
 - Released December 2016

Marijuana in the Workplace

- **Workplace safety**

- Drug and alcohol use or impairment in the workplace can pose a danger to everyone in the workplace, including the person who is impaired. This is particularly the case in "safety-sensitive" industries, such as transportation, health care and law enforcement, where symptoms related to impairment - reduced mobility, coordination, perception or awareness - can increase the risks of hazards, injuries and death.

Marijuana in the Workplace

- Task Force Recommends that the federal government:
 - Facilitate and monitor ongoing research on cannabis and impairment, considering implications for occupational health and safety policies
 - Work with existing federal, provincial and territorial bodies to better understand potential occupational health and safety issues related to cannabis impairment
 - Work with provinces, territories, employers and labour representatives to facilitate the development of workplace impairment policies

Marijuana in the Workplace

- In Nova Scotia, the provincial government is waiting on the federal government to table its marijuana legalization law before making any decisions.

Marijuana in the Workplace

- What does legalization of recreational marijuana mean for employers?



Marijuana in the Workplace

- Marijuana and Medical Benefits

- *City of Hamilton v Hamilton Professional Fire Fighters' Association*, 2016 CanLII 16885
- Issue - denial of reimbursement for medical marijuana under a group health benefit plan.

Accommodating Learning Disabilities

- Human rights legislation prohibits an employer from discriminating against employees on the basis of certain protected characteristics
 - This includes age, race, colour, and physical and mental disability

Accommodating Learning Disabilities

- The *Nova Scotia Human Rights Act* (the “Act”) defines a physical and mental disability very broadly.
- In section 3(I), the *Act* states that:
 - (I) “physical disability or mental disability” means an actual or perceived
 - i. loss or abnormality of psychological, physiological or anatomical structure or function,
 - ii. restriction or lack of ability to perform an activity,

Accommodating Learning Disabilities

- iii. physical disability, infirmity, malformation or disfigurement, including, but not limited to, epilepsy and any degree of paralysis, amputation, lack of physical co-ordination, deafness, hardness of hearing or hearing impediment, blindness or visual impediment, speech impairment or impediment or reliance on a hearing-ear dog, a guide dog, a wheelchair or a remedial appliance or device,
- iv. learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

Accommodating Learning Disabilities

- v. condition of being mentally impaired,
- vi. mental disorder, or
- vii. dependency on drugs or alcohol;

Accommodating Learning Disabilities

- Identifying symptoms of a mental disability are challenging for employers
 - Employers should be aware of their duty to inquire
 - Key indicators may include:
 - Uncharacteristic behaviour
 - excessive absenteeism
 - decreased productivity
 - lack of cooperation
 - difficulty concentrating
 - decreased interest
 - extreme displays of anger

Accommodating Learning Disabilities

- Employers are required to accommodate employee suffering from a mental illness which places limitations on their ability to do their job.

Accommodating Learning Disabilities

Accommodating Learning Disabilities

- Employers are required to accommodate to the “point of undue hardship”.
- Employees must cooperate with in the accommodation process
- Failure to cooperate, respond to requests for information or the rejection of a reasonable proposal may discharge the employer’s duty to accommodate.

Accommodating Learning Disabilities

- The type of accommodation an employee needs will vary greatly depending on the circumstances
- Common accommodations
 - Establishing a flexible work schedule
 - Modifying job duties
 - Modifying supervision procedures
 - Modifying the work space or a change of location

Accommodating Learning Disabilities

- Recent example - *BCT v Bonté Foods Limited*
 - Issue of accommodating a learning disability
 - Employee under a Last Chance Agreement
 - Given a warning and two suspensions
 - Employment was terminated after violations of a food safety policy

Accommodating Learning Disabilities

- Bonté received a medical note stating that the employee had been diagnosed with ADD in April 2011
- This diagnosis was confirmed by a psychologist in 2016

Accommodating Learning Disabilities

- The Arbitrator found that the recurring mistakes should have raised red flags, and called for ‘reasonable inquiries’
- Bonté ought to have posed the questions:
 - What is going on?
 - Is there a problem?
 - Is what is happening linked to the/a disorder?

Accommodating Learning Disabilities

- Points to consider
 - Mental disability is broadly defined and includes a learning disability
 - An employer can be deemed to have knowledge of an employee's disability even if the employee has not provided a medical certificate
 - An employee does not necessarily have to make a formal written request for accommodation

UPDATES

- Essential Services Legislation
- Collective Bargaining
- Precarious Workers

Essential Health and Community Services Act

Beginning negotiations

6 (1) Each employer and each bargaining agent who is a party to a collective agreement and does not have an essential health or community services agreement shall enter into negotiations for an essential health or community services agreement

(a) immediately, if the collective agreement expired before the coming into force of this Act;

Essential Health and Community Services Act

Beginning negotiations (cont.)

(b) immediately, if the collective agreement will expire within six months after the coming into force of this Act; or

(c) six months before the expiry of the collective agreement, if the collective agreement expires more than six months after the coming into force of this Act.

Essential Health and Community Services Act

Beginning negotiations (cont.)

6 (2) When the parties are required to begin negotiations in accordance with subsection (1), either the employer or the bargaining agent may, by written notice to the other, require the other to begin negotiations for an essential health or community services agreement and thereupon they shall begin negotiations without delay.

Essential Health and Community Services Act

Continuing negotiations

7 (1) Each employer and each bargaining agent for employees of that employer shall endeavour to reach an essential health or community services agreement through negotiations.

(2) The employer or the bargaining agent may request the Minister to appoint, and the Minister, upon such request, may appoint, a conciliation officer or mediation officer to assist them with their negotiations.

Essential Health and Community Services Act

Continuing negotiations (cont.)

(3) For greater certainty, the involvement of a conciliation officer or mediation officer appointed pursuant to subsection (2) does not replace any obligation on the employer or the bargaining agent pursuant to the *Trade Union Act* to confer with a conciliation officer for purposes of concluding and entering into a collective agreement in accordance with that Act.

Collective Bargaining

- **Government pattern for teachers was:**
 - Aug. 1/15 → 0%
 - Aug. 1/16 → 0%
 - Aug. 1/17 → 1%
 - Aug. 1/18 → 1.5%
 - Jul. 31/19 → .5%
- For better or worse, get used to it.

PRECARIOUS WORKERS

QUESTIONS?

Contact us:

Noella Martin, Q.C.
nmartin@wickwireholm.com
902.482.7013

Will Russell
wrussell@wickwireholm.com
902.482.7016