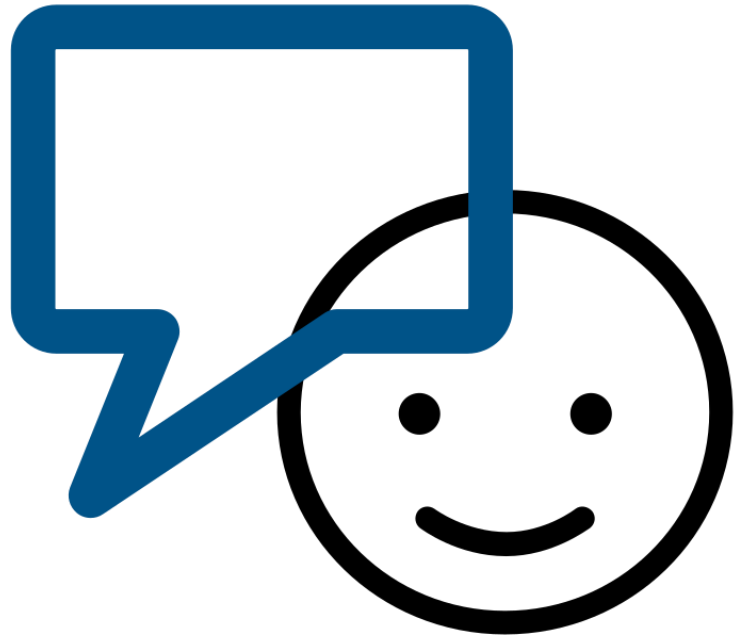




Mental Disability Management Issues

Clarence Bennett



Bell Let's Talk

Real or not?

Homer Simpson Intermittent Explosive Disorder

The condition is characterized by failure to resist aggressive impulses, resulting in serious assaults or property destruction. Examples of this behavior include threatening to or actually hurting another person and purposefully breaking or damaging an object of value.



Case Study: CUPE, Local 5017 v. NBCC

- Grievance: Offending conduct that gave rise to discipline and termination was non-culpable due to mental health issues.
- *“I cannot change the past but this medical leave helped me to improve and managed by personality where I can now recognize my responsibilities...”*

What happened?

- Daily Gleaner
- Facebook
- Respectful Workplace Complaint
- Police

Grievance Dismissed

- Having considered the evidence of Dr. Cohen and the evidence of Dr. Richards, I cannot, on a balance of probabilities, conclude that the Union has been able to establish that the grievor suffers from all the mental illnesses identified in Dr. Cohen's report. I do, however, agree that he is being treated with medication for some form of mental disorder as I cannot see doctors prescribing medication if this was not the case. I also note that he was seen by Mr. Noël for stress and anxiety. However, the question I have to determine is not whether the grievor meets the criteria for specific psychiatric disorders set out in the DSM 5, but whether there is a substantial connection between those symptoms and the grievor's conduct while he was employed at NBCC.

Grievance Dismissed

- In his report Dr. Cohen writes, “*Based on the documents provided to me with the exchange of emails I do believe, but only retrospectively as I was not his psychiatrist at that time that the content of emails and inflammatory accusations were part of [the grievor’s] mental condition that led to this termination. I also think the involvement of the police was associated with [his] mental disorder.*” However, other than this general statement, there was no objective independent medical evidence to support the conclusion. There is nothing in the evidence given by Dr. Cohen that would allow me to conclude, on a balance of probabilities, that the grievor’s medical condition could be the cause of his attitude and behavior towards his Employer and supervisors.

Grievance Dismissed

- Mental disabilities often raise more difficult problems for employers than physical disabilities. As noted by the arbitrator in *Halton District School Board and O.S.S.T.F., District 20*, 2015 CanLII 1394, “*unless there is some disclosure of the need for accommodation at relevant times, it is virtually impossible for the workplace parties to accommodate that disability.*” Other than disclosure by the employee, the duty to accommodate can also arise where the employer ought to reasonably have known that a mental disorder may be contributing to an employee’s erratic behavior, such that it would be appropriate to impute knowledge of the disability. However, I cannot conclude that the Employer had actual or imputed knowledge that the grievor’s behavior was due to mental disabilities. How could the Employer have known this when the grievor’s family doctor, Dr. Julie Whalen, stated in a letter dated March 13, 2017, that the diagnosis of paranoia was “unbeknownst” to her prior to the grievor’s initial consultation with Dr. Chari in August 2016? If his family doctor didn’t know, how can we impute such a knowledge on the Employer?

Mental Disability - Summary

- Absenteeism/Presenteeism
- Request and make sure you understand medical information
- Accommodation
- Performance Management
- Discharge



These materials are intended to provide brief informational summaries of legal developments and topics of general interest.

The materials should not be relied upon as a substrate for consultation with a lawyer with respect to the reader's specific circumstances. Each legal or regulatory situation is different and requires review of the relevant facts and applicable law.

If you have specific questions related to these materials or their application to you, you are encouraged to consult a member of our firm to discuss your need for specific legal advice relating to the particular circumstances of your situation.

Due to the rapidly changing nature of the law, Stewart McKelvey is not responsible for informing you of future legal developments.