

Dismissal And Criminal Charges: Avoiding Discrimination By Carefully Assessing The True Grounds Of Any Dismissal



In this case before the Administrative Labour Tribunal in Québec, the employee was hired in December 2018, and was working as a sales team lead for the employer, a recruitment firm. The plaintiff was an exemplary employee, with a spotless disciplinary record. However, prior to being hired, the employee had been subject to civil judgments ordering him to pay a million dollars for fraud, which he had not disclosed to the employer.

On November 15, 2022, the employee was arrested on fraud charges related to real estate transactions that were not connected to his current employment. Released pending trial, the arrest was widely publicized, including in a CTV News article, alerting the employer to the criminal charges. Following this discovery, the employer conducted further research and discovered the previous civil judgments against the employee. The employee was suspended with pay on December 21, 2022, pending an internal investigation.

Following the investigation, on January 18, 2023, the employer decided to dismiss the employee, on the basis that these civil judgments for fraud, which it had discovered, were inconsistent with the company's values and expectations regarding its employees. The employer specified that the dismissal was based on the previous civil judgments and not on recent criminal charges.

Decision

The employee contested his dismissal before the Administrative Labour Tribunal ("ALT") under section 124 of the *Act respecting labour standards* ("ALS").

He argued that the civil judgments were merely a pretext and that the real reason for dismissal was based on his arrest and subsequent criminal charges, which entitled him to the protection provided under section 18.2 of the *Charter of Human Rights and Freedoms*¹ ("Charter") given that there was no connection between his position and the criminal charges laid against him.

The ALT ruled that the criminal charges, and not the civil judgments, were the real reason for the dismissal, therefore the employee could be afforded the protection under section 18.2 of the Charter. The employer then had to prove an objective

connection between the real estate fraud charges and the employee's duties as sales team lead. In doing so, the employer argued that the fraudulent nature of the charges undermined the trust required for this position, which frequently required interacting with clients. However, the ALT found that this connection was not proven, as the criminal charges involved real estate transactions, which were separate and distinct from the employee's recruitment duties. In fact, his duties were limited to developing and supporting clients in the area of recruitment and did not involve handling money or managing any financial matters. Moreover, in this particular case, his position did not entail any specific ethical requirements nor provide an opportunity to re-offend. The ALT found that there was no objective connection between the charges and his responsibilities at work.

The employer also accused the employee of breaching his duty of loyalty for failing to disclose his previous civil judgments as well as the criminal charges when he was arrested. However, the ALT found that the employee was not required to disclose this information because it pertained to his private life and was in no way connected to his duties at work.

Accordingly, the ALT ordered the employee reinstated.

Takeaways

This decision highlights key considerations for employers in Québec when terminating an employee, particularly when legal charges are involved:

1. **Must be directly connected to the position:** An employer cannot dismiss an employee for cause solely on the basis of their criminal record or charges without proving that the responsibilities of the position are directly impacted. In the absence of a clear and objective connection between the alleged facts and the position held, section 18.2 of the Charter protects the employee against such a dismissal.
2. **Failure to disclose criminal record:** Failure to disclose any criminal record or civil judgments, without an explicit request from the employer, does not itself constitute grounds for dismissal. Information pertaining to an employee's private life need not be disclosed if it does not directly impact their duties.

It is also important to note that the legal regimes in Québec, Alberta and British Columbia confer certain human protections regarding criminal records and charges. Other provinces, including Ontario, do not consider it "discriminatory" to terminate employees who have criminal charges pending, or unpardoned offences on record.

Footnote

1. Charter of Human Rights and Freedoms, CQLR, c C-12, s 18.2

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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