

Drug 'use' as a disability: are you protected against discrimination under Canadian jurisprudence?

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1 Issues

- Rather than tackling drug use as a public health matter, the Canadian government has espoused a prohibitionist approach.
- The stigma faced by drug users is reinforced by criminal laws — casting people who use drugs as immoral, lacking in self-control, a drain on our health-care system, and a menace to society.
- Notwithstanding the Canadian government's prohibitionist policies, the Canadian judiciary has begun — through a human rights lens — to entertain more of a public health angle when dealing with drug dependence.

2 Description

- 77% of Canadians feel drug use is a significant cause of criminal activity.
- Almost 63% of Canadians view drug use as having a serious impact on the cost of the public health-care system.
- Over 60% of Canadians believe that drug use has a considerable impact on the health-care costs related to HIV/AIDS.
- The public often perceives people dependent on drugs as less productive members of society, devaluing their contributions and often resulting in — and in some cases justifying — discriminatory laws and practices in employment, social services, housing and health services.
- The pattern and practice of exclusion may result in people going underground with their addiction, exposing them, and in some cases others, to risky behaviour — all likely to increase HIV prevalence.

3 Lessons learned

- Under the *Canadian Charter of Rights and Freedoms* (Charter), and human rights statutes, Canada is among the only countries in the world in which anti-discrimination laws offer people who use drugs some degree of protection against unjustified discrimination.
- Notwithstanding this advancement in Canadian jurisprudence, those who use drugs but are not deemed dependent receive little to no legal protection.
- However, people who are identified as drug-dependent receive anti-discrimination protection on the ground of disability under human rights codes.
- Some jurisdictions in Canada extend the definition of disability to perceived or past substance dependence.
- Most Canadian courts view all forms of drug testing or disclosure requirement as prima facie discriminatory, requiring entities that request such activities to meet certain legal requirements before being allowed to engage in them.

4 Next steps

- People who are drug dependent should receive protection on disability grounds under section 15 of the Charter.
- Such protection should also extend to people who are perceived to have a drug dependence, and as such protect people who use drugs and are perceived as drug dependent and discriminated against because of drug dependency.
- People who use drugs should receive protection under all human rights statutes against discrimination on the basis of actual or perceived drug dependence.
- A clear, uniform position is needed to establish perceived drug dependence as a protected ground.

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