

## **TeckCominco Decision: 2000 BC Labour Relations Board Arbitration between Cominco Ltd. & the Union Re: Cominco Smoking Ban**

The courts across Canada have not found nicotine addiction to be a disability as a ground for protection under the *Charter of Rights and Freedoms*. However, Courts, Tribunals and Arbitrators have adopted a broad approach to what constitutes a physical disability under the *Human Rights Code*. It was broadened even further with respect to nicotine-addicted individuals following a Labour Relations Board Arbitration case in BC between Cominco smelter operator and its union in 2000.

At issue in Cominco was a smoking policy that banned the use and possession of tobacco on company property, and didn't allow sufficient time for staff to leave the property on breaks to smoke. The Union argued that nicotine addiction constitutes a disability under the *Human Rights Code*, and that the policy discriminated against smokers because if they could not control their addiction, they would lose their job. The Union argued that addicted smokers must be accommodated in ways that would permit them to continue to work, and permit them to smoke in an outside area, while taking steps to ensure that the smoke didn't contaminate the environment of others.

The Arbitrator acknowledged that the Courts have not found nicotine addiction to be a disability as a ground for protection under the *Charter*, but he held it was within the meaning of physical disability under the *Human Rights Code*. While the Arbitrator found that heavily addicted smokers were disabled, he also recognized that the employer's no-smoking policy was reasonable and adopted to protect non-smokers from a known hazard. The matter was referred back to the parties to resolve how to accommodate the heavily addicted smokers, which included considering the union's preference for an outdoor smoking area, and the Arbitrator's suggestion of a program of gradual adaptation to the smoking ban.

It should be noted that the Arbitrator recognized that the increase in public smoking policies were meant to protect others from the harmful effects of second-hand smoke. He acknowledged that these policies support the position that while smoking is a legal activity, it should not be carried out in places where the smoke might harm others.

### **Teckcominco Accommodation Outcome:**

According to the Claims and Disability Management Team at Teckcominco, the negotiated settlement subsequent to the above decision is as follows: The Tobacco Ban Policy on Teckcominco Property banning tobacco products on the entire property was maintained, but the Company put a program in place wherein it would provide financial assistance to employees who are participating in tobacco control or cessation programs under the supervision of their attending physician. The Financial Assistance Program offered on a 50% cost share basis with a Company-share lifetime maximum of \$500.00 per employee. Further, to accommodate heavily addicted employees, they allowed a temporary modification of break times to allow employees to leave the property to smoke on unpaid periodic breaks for a 3-month period only. The total smoking ban remains in effect today

In a housing situation, it is highly likely that a no-smoking policy would be found to be justified to protect the health of other tenants. This case highlights the recognition that second-hand smoke is dangerous, and any accommodation must not compromise the health of non-smokers. The bottom line is that there is no right to smoke enshrined in law, and smoke-free policies have been found to be legal by the Courts in Canada.