

Lane v. ADGA Group Consultants Inc. of Ottawa

A recent Ontario Human Rights Tribunal decision in the case of *Lane v. ADGA Group Consultants Inc. of Ottawa* has upheld the right of persons with a mental health disability to be appropriately accommodated in the workplace under Ontario's *Human Rights Code*.

The Ontario Human Rights Commission investigated and litigated the complaint filed by Mr. Lane regarding his dismissal from ADGA Group Consultants Inc., a company involved in contract government information technology services.

Mr. Lane was hired by ADGA as a quality assurance analyst. His responsibilities included "Mission Safety Critical" work such as artillery software testing. A few days after he commenced his employment, Mr. Lane advised his supervisor that he had bipolar disorder and required accommodation. The accommodation included monitoring for indicators that Mr. Lane might be moving towards a manic episode; contacting his wife and/or doctor; and occasionally allowing Mr. Lane to take time off work to avert a situation where he would move from pre-manic stage to a full-blown episode. His supervisor gave no assurances, but undertook to get back to him.

As Lane became more anxious about management's response to his accommodation request, he began to exhibit pre-manic symptoms. Although Mr. Lane's supervisor and manager were aware of this when they met with him a few days later, they did not address any of his needs, they did not consider putting the meeting off to get more information, and they did not obtain legal advice. Instead, they immediately terminated his employment, which triggered a severe reaction that led to full-blown mania. Mr. Lane was hospitalized for 12 days, after which he experienced severe depression due to his inability to obtain other work. His financial position deteriorated, he had to sell his house, and his marriage ended.

In its decision, the Tribunal held that management terminated Mr. Lane because of his disability and perceptions related to his disability, with virtually "no investigation as to the nature of his condition or possible accommodations within the workplace."

The Tribunal further found that ADGA had breached the procedural duty to accommodate, and this itself constituted a form of discrimination. The procedural duty to accommodate required "those responsible to engage in a fuller exploration of the nature of bipolar disorder ... and to form a better prognosis of the likely impact of [Mr. Lane's] condition in the workplace."

The Tribunal also rejected ADGA's argument that Mr. Lane had an obligation to disclose his disability during the hiring process. The Tribunal held that if Mr. Lane had revealed this information, it would have likely triggered a stereotypical reaction in most employers about his ability to do the job, leading to a decision not to hire and no opportunity to explore possible accommodations.

In awarding damages, the Tribunal wrote, "This was an instance where the Respondent's lack of awareness of its responsibilities under the *Code* as an employer was particularly egregious. There were no workplace policies in place dealing with persons with disabilities. Moreover, senior management were singularly oblivious to those obligations... ."

The Tribunal found ADGA's dismissal of Mr. Lane to be "not only precipitate and unaccompanied by any assessment of Mr. Lane's condition but also callous to the extent of its consequences in the sense that nothing was done on the day to ensure that Mr. Lane in his pre-manic condition reached his home safely and sought medical attention."

The Tribunal awarded Mr. Lane \$35,000 as general damages; \$10,000 for mental anguish; a further \$34,278.75 in special damages, as well as pre- and post-judgement interest.

With respect to public interest remedies, the Tribunal ordered ADGA to establish a written anti-discrimination policy and retain a consultant to provide training to all employees, supervisors, and managers on the obligation of employers under the *Code*, with a focus on the accommodation of persons with mental health issues.

Commenting on the decision, Ontario Human Rights Chief Commissioner Barbara Hall stated, "This is a precedent-setting case for mental health disability in Ontario. Employers need to realize the risks in summarily dismissing someone with conditions like bipolar disorder."

"The Duty to accommodate is a reality", she added. "At the systemic level, the decision clearly reinforces the necessity for employers to take all requests for accommodation seriously and process them appropriately. At the personal level, the devastating impact of the events on the life of Mr Lane would have been very different had a real effort been made to explore with him and implement creative and individualized solutions."

ADGA is appealing the decision to Divisional Court.