

Discrimination and Stereotyping: A Workplace Case Study

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The Yukon Court of Appeal recently addressed a human rights complaint in which the petitioner, a high-level government official, alleged discrimination on the basis of mental disability contrary to ss. 7 and 9 of the *Yukon Human Rights Act* (prohibiting employment discrimination based on physical or mental disability). Darrell March began working with the Yukon Department of Environment in 1995. In 1999, he was diagnosed with bipolar disorder after experiencing an acute manic episode. Upon returning to work, he made a presentation to management and others about his bipolar condition. His disorder typically had a seasonal aspect: a depressive phase in the winter and a hypomanic phase in the spring. The employer accommodated his condition by permitting flexible work arrangements and in other ways. In 2004, March began a one-year temporary assignment as the Acting Assistant Deputy Minister of Corporate Services. In 2005, March attended a meeting and behaved (in the words of the Deputy Minister, Huebert) in an "extremely aggressive,""argumentative," and "disruptive" way. March himself characterized his behaviour as "passionate" but unrelated to his disability. The next day, Huebert advised March that he was being placed on paid medical leave and directed him to seek treatment. The letter added, "I am a strong supporter of yours, Darrell, and I want to... help you to return to work as soon as you are able to. In the meantime,... I feel you need to address your medical condition as soon as possible."

March saw this letter as "intended to be demeaning in a most appalling way." He did see his physician, who concluded he was showing elements of hypomania. A week later, March visited his workplace to express concern about having his e-mail account disabled and about "people being told to stay away from" him. Huebert denied telling anyone to avoid March, but agreed to restore limited e-mail access. March eventually returned to work three months later, after an assessment cleared him. He filed a complaint with the Human Rights Commission, stating that he had been unfavorably treated on the basis of his mental disability "by being directed off work involuntarily and unilaterally." He claimed the employer should have initiated disciplinary action against him, as it would have for any other employee, because, he said, formal disciplinary proceedings would have provided him with an opportunity to challenge his involuntary leave. After a 19-day hearing, the board dismissed the complaint, finding that: (1) March had behaved in an inappropriate manner; (2) because March had provided extensive training, imparted honest information, and clearly expressed, to coworkers and supervisors, his bipolar disorder and the symptoms of his seasonal affect, it could not be determined that the employer's actions in response "were based on stereotyping," and (3) among other things, given that the employer had successfully accommodated March for six years, the employer had not discriminated. The course of action taken "was to deal with his inappropriate behaviour in a manner that was beyond the usual route of discipline by considering his medical condition."

March appealed, and the lower court dismissed the complaint. The "essence of discrimination [was] arbitrary, negative treatment," and required a "causal connection between the protected characteristics and the actual arbitrary, negative treatment." The fact that March had the characteristics of a protected group "did not, in and of itself, preclude the Government from addressing workplace misconduct," and the employer was under "a positive duty to seek out medical information and was entitled to request a medical assessment" before March was allowed to return to work.

March's appeal to the Court of Appeal was dismissed because he failed to establish a prima facie case of discrimination. Dealing with his central argument—that his conduct was not caused by his mental disability; thus, the employer's actions in removing him from the workplace were a stereotypical reaction to his disability—the court determined that the employer's response was not an arbitrary reaction attributable to discriminatory stereotyping. Instead, it was directed to ascertaining the cause of March's conduct and deciding how it should be addressed. The employer "could not ignore his disability and [had] asked for a medical assessment of his condition as part of that investigation." The court emphasized, first, that whether March's behaviour was disruptive and inappropriate was a question of fact; the board below heard the evidence and concluded that it was. Moreover, the employer took no action other than the temporary measures designed "to address and investigate unacceptable behaviour that [it was] not required to tolerate. It was not a stereotypical reaction to his mental disability." The decision is *March v. Yukon (Human Rights Board of Adjudication)*, 2010 YKCA 3 (Yukon C.A. March 17, 2010). ML