

## Case In Point

### Disclosure of Disability Post-Termination Won't Negate Dismissal for Cause

**Date:** March 2, 2016

Is an employer obligated to set aside the termination of an employee if the employee subsequently discloses a disability? The Ontario Court of Appeal has seemingly answered this question in the case of [Bellehumeur v. Windsor Factory Supply Ltd.](#) and provided clarity to employers regarding their ability to discipline inappropriate workplace conduct perpetrated by employees who suffer from a disability.

After being disciplined in the workplace, Mr. Bellehumeur uttered violent threats towards a co-worker and was terminated with cause. Subsequent to his termination, Mr. Bellehumeur disclosed to his employer that he suffered from a mental health disability. In this respect, he argued that the conduct giving rise to the termination ought to have been accommodated and in failing to do so, the employer discriminated against him.

The Court of Appeal upheld the trial judge's findings that Mr. Bellehumeur's disability had not been disclosed during the course of his employment and, as a result, the employer's decision to terminate his employment for inappropriate workplace behaviour did not amount to discrimination. The Court went on to confirm that inappropriate conduct which may arise or be influenced by a disability may still merit discipline, so long as the discipline is the same as would have been imposed on any other employee engaging in the same conduct.

On February 25, 2016, the Supreme Court of Canada denied leave to appeal from the Court of Appeal decision. Relying on this decision, employers can be assured that the duty to accommodate will not be triggered where they are not aware that the employee suffers from a disability. Further, the duty to accommodate does not require that an employer accept inappropriate workplace conduct. Employers should feel confident that they can manage inappropriate behaviour in the workplace with a consistent approach without being found to have breached their obligations under the *Human Rights Code*.