



BY ASHLEY BROWN

# WORKPLACE OFFENCES OF THE OLFACTORY SENSES

Ideally, workplace misconduct is dealt with swiftly and decisively through an established disciplinary process.

However, when the source of the offence is not a worker's conduct but personal hygiene, what recourse does an employer have?

## WHY MAKE A STINK?

Matters involving personal hygiene can present health, safety, and other workplace risks, and take a toll on employee relations and workplace morale. For example, a worker who exhibits poor personal hygiene in the context of a food processing facility not only risks public health but an employer's brand and reputation. A health-care worker who fails to maintain personal hygiene can cause disastrous – even fatal – consequences for patients under his or her care. Personal hygiene can also trigger an employer's accommodation obligations under human rights legislation – for example, where a worker suffers from a disability that causes unpleasant body odour.

Given the discomfort broaching the subject and concerns about becoming ensnared in human rights litigation, it's no wonder many employers are fraught with anxiety about how to navigate body odour issues in the workplace.

## TWO HELPFUL DECISIONS

The following decisions show us that personal hygiene can and should be treated like any other issue related to health, safety, or the breach of a workplace policy.

In *Southwell v. CKF*, 2017 BCHRT 83, CKF, a manufacturer of food packaging products, received complaints from employees that a coworker, Southwell, disregarded the company's sanitation protocols, in that he: (i) spat on the plant floor; (ii) blew on product that was to be packaged; (iii) had offensive body odour; and (iv) failed to excuse himself before passing gas.

CKF advised Southwell his conduct was unacceptable and gave him the opportunity to disclose any medical condition that may have contributed to his workplace behaviour. Southwell reported nothing.

Throughout the next couple of months Southwell's personal hygiene improved. However, he continued to exhibit subpar performance and an inability to follow instruction. His employment was terminated prior to the end of his probationary period.

Thereafter, Southwell was diagnosed with a disability which was said to cause body odour and flatulence. He filed a complaint with the British Columbia Human Rights Tribunal alleging discrimination in employment. CKF took the position it had no prior knowledge of Southwell's disability; there was no evidence of a disability at the time of the termination, and the decision to terminate was not based on personal hygiene but rather on performance issues. The tribunal agreed with CKF and dismissed the complaint.



A similar result was reached in *Von Bloedau v. Transcom Worldwide (North America) Incorporated*, 2014 HRTO 67, heard before the Human Rights Tribunal of Ontario. Throughout his two-year tenure as a customer service agent Von Bloedau was the subject of repeated complaints from coworkers regarding his body odour. As a result, he received progressive discipline, including coaching, verbal and written warnings, and suspensions.

With each disciplinary notice, Von Bloedau was told of the requirement to practise proper hygiene and that this was part of a professional and respectful workplace. He was also reminded an individual's scent could be the result of various factors including diet, hygiene or medical issues, and given suggestions how to address his odour issues (e.g., bring a change of clothes to work after bicycling in extreme heat). Von Bloedau was also invited to (but did not) provide medical documentation in the event his odour was caused by a medical condition.

Eventually, Von Bloedau's employment was terminated and he filed a complaint with the Human Rights Tribunal alleging discrimination. However, unlike the previous case, Von Bloedau's complaint was not framed as an issue of disability discrimination, but rather as discrimination based on the protected ground of gender. Von Bloedau alleged his colleagues, predominantly female, had a stronger perception of body odour, and that as a "sweaty male" he was held to a different standard for body odour than his female counterparts. The tribunal disagreed with Von Bloedau, finding there was no evidence of a violation of the *Human Rights Code* on the basis of gender or otherwise.

## PRACTICAL TIPS FOR EMPLOYERS

These two decisions remind us that personal hygiene can and should be addressed like any other health, safety or human rights issue (if applicable) in the workplace. As such, to minimize the risk associated with personal hygiene issues consider the following practical tips:

- Have and consistently enforce a personal hygiene policy which makes clear appropriate personal hygiene is a condition of employment.
- Respect the worker's dignity by ensuring any discussions about body odour take place in private, in a respectful manner.
- Inquire and provide the worker an opportunity to explain any factor that may contribute to body odour, including a medical condition.
- Where the employee discloses, or it reasonably ought to be known, personal hygiene is related to a disability or another protected ground under human rights legislation (e.g., religious observance, etc.), consider the legal obligation of reasonable accommodation.
- Document all discussions and disciplinary steps including coaching, warnings, letters, meetings, etc.

- If all else fails, termination of employment may be an appropriate option.

*For more information and/or assistance in your workplace, contact the employment law experts at Sherrard Kuzz LLP.*

*Ashley Brown is a lawyer with Sherrard Kuzz LLP, one of Canada's leading employment and labour law firms, representing management. Ashley can be reached at 416.603.0700 (Main), 416.420.0738 (24 Hour) or by visiting [www.sherrardkuzz.com](http://www.sherrardkuzz.com).*

*The information contained in this presentation/article is provided for general information purposes only and does not constitute legal or other professional advice, nor does accessing this information create a lawyer-client relationship. This presentation/article is current as of August 2017 and applies only to Ontario, Canada, or such other laws of Canada as expressly indicated. Information about the law is checked for legal accuracy as at the date the presentation/article is prepared, but may become outdated as laws or policies change. For clarification or for legal or other professional assistance please contact Sherrard Kuzz LLP.*



**HI-LITE Systems**  
 1680 Bonhill Road, Mississauga, ON L5T 1C5  
 Tel: 905-677-4032 | Toll Free: 877-HILITE-1 (North America) (877-445-4831)  
 Website: [www.hi-lite-systems.com](http://www.hi-lite-systems.com) | Email: [hilite@hi-lite-systems.com](mailto:hilite@hi-lite-systems.com)



Aluminum is the leading edge material for concrete forming and concrete shoring products today.

Shoring frames • Fly Forms • Wall Forms • Access Trusses • Scaffolding • Post Shores • Aluminum Beams