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## Criminal Law

# Treating substance abuse as a disability could do more harm

**By AdvocateDaily.com Staff**



Growing legal pressure on employers to treat substance abuse as a disability could do more harm than good by devaluing the role that free will plays in overcoming addiction, says Toronto criminal lawyer [Jordana Goldlist](#).

“Substance abuse is not a disability, it is a choice; it is a lifestyle. As difficult as it may be to choose a different path, it is not impossible,” says Goldlist, principal of [JHG Criminal Law](#).

Canada's human rights tribunals and courts of appeal have started treating drug and alcohol dependency as a disability worthy of workplace accommodations, reports the *[Toronto Star](#)*.

Substance abuse is not explicitly listed as a disability in federal or provincial human rights laws, the *Stars* says. But Jeff Meldrum, a spokesman for the Canadian Human Rights Commission, tells the newspaper that employers might find themselves in legal trouble if they fire employees for their substance abuse because it could be considered a disability.

Goldlist says this a wrong approach that confuses difficulties with disabilities and serves to enable addicts.

"To equate it with a physical impairment like paralysis that people cannot possibly overcome no matter what they do, I think is demeaning to people who suffer true disabilities, and I think that it allows people to stay in their addiction," she says.

Goldlist says before becoming a lawyer she battled addiction for more than a decade and has been sober for 12 years.

“To suggest that I don’t make that choice every day takes away from the struggle of those people who have overcome it,” she tells [AdvocateDaily.com](http://AdvocateDaily.com).

Goldlist has been a speaker/moderator at Grant House Addictions Treatment Centre and is a youth mentor with Covenant House, drawing on her own experiences to help young people struggling

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with substance abuse.

Criminal lawyers often argue before judges that their clients’ drug or alcohol dependency is a mitigating factor in sentencing. Goldlist says she herself has occasionally made such arguments to give context to her clients’ crimes but not to excuse them.

“It’s certainly not a justification for criminal behaviour. It’s an explanation,” she says.

Addicts sometimes lose their sense of right and wrong, committing robberies and other crimes to feed a raging hunger for drugs, she adds. “It’s almost akin to someone who is starving.”

Unfortunately, Goldlist says, addiction treatment programs for prisoners are only available in federal institutions, which are reserved for offenders serving sentences of two years or more. By the time they reach federal penitentiaries, addicted offenders have likely passed through the most critical first six to 12 months of withdrawal when they most need help, she says.

The federal human rights commission has issued a [guide](#) to help employers accommodate employees so they can seek treatment while remaining in the workforce.

Goldlist agrees that employers should accommodate employees who admit they have a problem, up to a point.

Organizations should be able to fire employees who flagrantly abuse drugs or alcohol on the job, but should be flexible with those genuinely trying to free themselves from dependency, she says.

“Is recovery difficult? Absolutely. That doesn't make it a disability. It makes it an obstacle,” she says.

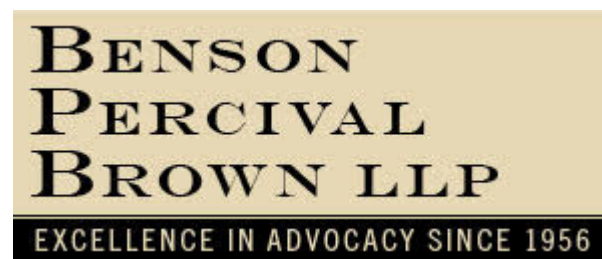
“To start telling employers that they can’t fire someone who’s suffering from some obstacle that they choose to engage in is wrong,” she says. “That doesn’t mean we shouldn’t offer help.”

Employers should give workers leaves of absence to battle their addictions. But there should be a limit to their time away from work and a requirement that they provide proof they are in treatment, she adds.

While Goldlist favours penal, social and workplace supports for substance abusers, she fears that equating addiction with a disability will blunt the message that drug and alcohol dependence can be overcome.

“It’s tough. There’s no question,” she says. “It is a struggle, but it is not a disability. A disability is something that cannot be overcome.”


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