

*Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles*

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*Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ):*

**The Supreme Court of Canada Discusses the Balance between the Duty to Accommodate and the Employee's Duty to Work**

In a recent Supreme Court of Canada decision, the Court discussed the balance between the duty to accommodate and the employee's duty to work.

The complainant suffered from numerous physical and mental disabilities and had missed 960 days of work in the previous 7 ½ years. She was terminated after being absent for over six months and the employer received a letter from her physician indicated that she needed to be off work for an indefinite period. The employer had also received a psychiatric assessment which indicated that the complainant would be unable to "work on a regular and continuous basis without continuing to have an absenteeism problem as in the past." The employer relied on her inability to regularly attend work as the basis for her termination.

In upholding the termination of the complainant, the Supreme Court noted as follows with respect to the duty to accommodate to the point of undue hardship:

- The employer must accommodate the employee in any way

that, while not causing the employer undue hardship, will ensure that the employee can work.

- The purpose of the duty to accommodate is to ensure that persons who are otherwise fit to work are not unfairly excluded where working conditions can be adjusted without undue hardship.
- The purpose of the duty to accommodate is not to completely alter the essence of the contract of employment, namely, the employee's duty to perform work in exchange for remuneration.
- The employer does not have a duty to change working conditions in a fundamental way, but does have a duty, if it can do so without undue hardship, to arrange the employee's workplace or duties to enable the employee to do his or her work.
- The test for undue hardship is not total unfitness for work in the foreseeable future. If the characteristics of an illness are such that the proper operation of the business is hampered excessively or if an employee with such an illness remains unable to work for the reasonably foreseeable future even though the employer has tried to accommodate him or her, the employer will have satisfied the test.
- The employer's duty to accommodate ends where the employee is no longer able to fulfill

obligations associated with the employment relationship for the foreseeable future.

The Court also held that it is appropriate to “assess the duty to accommodate globally in a way that takes into account the entire time the employee was absent” and not just the situation that existed at the time of termination. In this case, the Court noted that the complainant had been accommodated for a number of years and the doctors were not optimistic about her attendance in the future. In the result, the Court upheld the termination of the complainant finding that the employer had fulfilled its duty to accommodate.

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