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ABSENTEEISM AND THE DUTY TO ACCOMMODATE: THE SUPREME COURT GRANTS HYDRO-QUÉBEC LEAVE TO APPEAL

On February 8, 2007, the employer's motion for leave to appeal was granted by the Supreme Court of Canada, regarding the Court of Appeal judgment in *Syndicat des employées et employés de techniques professionnelles et de bureau d'Hydro-Québec v. Hydro-Québec* (2006 QCCA 150).

By: [Mtre. Véronique Morin](#)

This leave to appeal is positive news. It will be interesting to know what position the Supreme Court will adopt in this dispute, which has raised several questions about the real scope of the duty to accommodate in case of excessive absenteeism.

Employers, unions, employees and the courts will certainly benefit from the references the Supreme Court should make to the principles it recently reiterated in *re McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de l'Hôpital général de Montréal*, 2007 SCC 4 (a decision we summarized in our [release of February 1, 2007](#)).

The Court of Appeal judgment in short

On February 7, 2006, the Quebec Court of Appeal reexamined the duty for each party involved – the employer, the employee and, where a collective agreement exists, the union – to contribute to the search for a reasonable accommodation.

Although the Court of Appeal acknowledged the employer's good faith and "almost irreproachable" conduct, its conclusion that the parties failed to make one last attempt at accommodation is food for thought.

Indeed, the Court of Appeal had required that the measures envisioned by the different medical experts consulted in the months leading up to the administrative dismissal be reexamined, despite the reservations expressed in their prognosis by the physicians the employer had consulted and the employer's undeniable patience and tolerance throughout the previous years.

The Court of Appeal judgment is analyzed in our [newsletter published in March 2006](#), which can be accessed on our firm's web site.

Pending the Supreme Court's judgment on this matter in 2008, the members of our firm's Labour and Employment Group will be able to work with you to analyze the practical scope of the duty to accommodate, depending on the complexity of the employees' health conditions, work situations, and the special circumstances of the cases you have to consider on a daily basis.

The content of this release provides our clients with general comments on recent legal developments. The text is not a legal opinion. Readers should not act solely on the basis of the information contained herein.