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The Hydro-Québec Case: The Supreme Court Confirms That There are Definitive Limits to an Employer's Duty to Accomodate

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On July 17, 2008, the Supreme Court of Canada rendered a unanimous judgment setting aside the ruling by the Quebec Court of Appeal and affirming that the employer had fulfilled its duty to accommodate in the case of *Hydro-Québec* v. *Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ).*

In this judgment, the Court essentially dealt with two aspects. It analyzed the concept of "undue hardship" in order to clarify the employer's burden of proof, and to limit this burden based on the circumstances specific to each dispute. In addition, the Court reiterated that an employer's duty to accommodate must be assessed globally commencing from the start of the employee's disability period.

In a nutshell, the principles set out in this judgment are of interest to employers, unions and employees, as well as to the courts called upon to determine the practical details of a duty to accommodate on a day-to-day basis. However, the conclusions reached with regard to the facts of the dispute demonstrate that there are definite limits to the reasonable duty to accommodate.

The Supreme Court of Canada recognized that for several years Hydro-Québec had tried to adjust the complainant's working conditions to her situation (the physical layout of her workstation, a part-time schedule, assignment to a new position, etc.). Moreover, the employer demonstrated that despite these accommodations, given the employee's chronic absenteeism, she could not return to work in a reasonably foreseeable future and, in this context, it had met its burden of proof and established the existence of undue hardship if further accommodations were to be required.

In our newsletter, we have analyzed the principles of reasonable accommodation established in the *McGill University Health Centre* case as well as in the context of the dispute in the *Hydro-Québec* case and, in so doing, have singled out the decisive elements of this recent Supreme Court judgment relating to the demonstration of undue hardship and the time period during which reasonable accommodation should be assessed.

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