

# Supreme Court of Canada Confirms That the Duty to Accommodate Applies to Workers Injured at their Workplace

February 06, 2018

On February 1, 2018, the Supreme Court of Canada<sup>1</sup> confirmed the decision rendered by the Québec Court of Appeal on June 15, 2015, holding that the provisions of the Act respecting industrial accidents and occupational diseases (the "AIAOD") regarding the rehabilitation of injured workers and their reinstatement in their positions must be interpreted in light of the Québec Charter of Human Rights and Freedoms (the "Charter").

The AIAOD provides a complete compensation scheme for injured workers, but imposes no express duty on employers to accommodate such workers. The Supreme Court has nevertheless confirmed that the duty to accommodate is one of the central principles of the Charter, and one that must necessarily apply to the provisions of the AIAOD. The Supreme Court has thus upheld the principle that all statutes must be construed within the context of the Charter.

Employers are therefore obliged to continue applying the practices they have adopted since July 2015 and to accommodate workers suffering from functional limitations resulting from employment injuries when they return to their jobs. The employer is therefore still required to adapt and adjust the workplace and/or the duties of any worker who has sustained an employment injury, unless such changes would entail undue hardship.

With regards to the employer's duty to accommodate, we remind you that the employer need not show that it is impossible to accommodate the worker, but rather that no reasonable or practical accommodation is possible under the circumstances. Although the duty stops at the point of undue hardship, the employer must nevertheless be prepared to endure a certain hardship.

The Commission des normes, de l'équité, de la santé et de la sécurité du travail (the "CNESST"), for its part, must continue to ensure that employers make genuine efforts, up to the point of undue hardship, to accommodate employees who are able to return to work.

Finally, it is also noteworthy that the Administrative Labour Tribunal, through its Occupational Health and Safety Division, (the "ALT"), retains jurisdiction to determine whether an employer has fulfilled its duty to accommodate a worker returning to his or her job after suffering from an employment injury, before concluding that there is no suitable position available within the company for the employee concerned.

## Practical Advice

We therefore reiterate the practical advice that was offered when the Court of Appeal's rendered its decision in July 2015:<sup>2</sup>

- Perform an analysis in order to identify all possible accommodations when the injured worker begins his rehabilitation. Claiming that no suitable employment is available without actually making any efforts to find a position compatible with the **worker's limitations will not be sufficient**.
- Make a suggestion to the CNESST, when it is performing an analysis of the pre-injury employment, to also evaluate other available positions that could potentially be compatible with the identified functional limitations.
- Create and update, when available, an ergonomic analysis of the requirements for each position in order to be able to provide alternatives or to anticipate undue hardship situations.
- As the expiry of the time limit for exercising the right to return to work approaches, gather all updated medical information in order to evaluate if this right may be exercised, as well as the prognostic of the injury.
- In unionized environments, involve the union in the search for alternatives, since it also has a duty to collaborate with regard to accommodation.

<sup>1</sup> Québec (Commission des normes, de l'équité, de la santé et de la sécurité du travail) v. Caron, 2018 SCC 3.

<sup>2</sup> Katherine Poirier, "Employment Injury: The employer's duty to accommodate employment injuries is now more onerous," BLG Publications, July 13, 2015.

By

[Maude Longtin](#), [Katherine Poirier](#)

Expertise

[Labour & Employment](#)

---

## **BLG | Canada's Law Firm**

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### **BLG Offices**

#### **Calgary**

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### **Ottawa**

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### **Vancouver**

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### **Montréal**

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### **Toronto**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.