



Education Law eBulletin

A newsletter for educators

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Human Rights Tribunal confirms extent of employer's duty to inquire

A recent decision of the Human Rights Tribunal of Ontario touched on various topics that affect the accommodation of employees in the employment context and an employer's duty to inquire.

In *A.K. v. Peel District School Board*,¹ an elementary teacher with over 20 years of seniority first approached her school principal to request a change in her teaching timetable as she no longer wanted to teach the applied math course. She expressed that she had suicidal thoughts, was frustrated by the students' lack of math skills and voiced concern that the frustration may impact her health. She eventually presented a doctor's note stating that she could not teach special needs kids. The teacher was advised to seek an accommodation for the request for the timetable change through the proper avenue. However, in the interim, the teacher's request was granted outside of the accommodation process as a shuffle of teachers was required for other reasons.

Issue later arose that same school year wherein the teacher persistently approached and sought out the principal regarding her personal issues to the point where it made the principal uncomfortable. A superintendent was asked to intervene and ultimately the teacher was advised to no longer communicate with the principal. The school board also called the police at one point to check on the teacher as staff was concerned about her well-being and also due to safety concerns relating to the teacher's ongoing communications and behaviours with respect to the principal. The teacher was eventually placed on a paid administrative leave when she failed to follow the superintendent's instructions not to communicate. She then claimed there were medical reasons to support her behaviours in the workplace. The school board asked for medical documentation regarding her disability-related needs and restrictions and also began an independent medical exam ("IME") process with the teacher's consent.

Eventually, the teacher was cleared to return to work through the IME process. As part of the teacher's return to work plan, the school board transferred her to another school, which the teacher challenged by presenting a medical note from a doctor that the transfer would have a serious adverse effect on her health. She later provided a similar note from her psychologist.

The teacher claimed that the "delay" in her timetable change request and the placement on administrative leave, which she claimed worsened her suicidal thoughts, were both acts of discrimination under the Ontario *Human Rights Code* (the "Code"). The teacher also claimed that the school board had a duty to inquire

and accommodate her disability (suicide) the moment she expressed same to the principal.

The Tribunal found that the teacher failed to establish a disability-related need not to be assigned to teach applied math and not to be at home on an administrative leave. The Tribunal accepted that the teacher's placement on administrative leave was solely as a result of having disregarded the superintendent's instructions on contacting the principal. Regarding the duty to inquire, the Tribunal found that the school board fulfilled that duty once she was placed on administrative leave and the school board began the IME process. The Tribunal stressed the duty to cooperate on the part of the employee in the accommodation process – in this case, the teacher failed to provide any information on her restrictions and/or disability-related needs when the school board asked for same.

The Tribunal highlighted an important paragraph from the Ontario Human Rights Commission Policy and Guidelines on Disability and the Duty to Accommodate:

There may be instances where there is a reasonable and bona fide basis to question the legitimacy of a person's request for accommodation or the adequacy of the information provided. In such cases, the accommodation provider may request confirmation or additional information from a qualified health care professional to obtain the needed information. No one can be forced to submit to an independent medical examination, but failure to respond to reasonable requests may delay the provision of accommodation until such information is provided.²

The teacher also claimed that the delay incurred in the IME process breached the school board's procedural duty to accommodate and that the decision to transfer her to another school was discriminatory under the *Code*. The Tribunal found that any delay was a result of the teacher's failure to fully participate in the IME process and the school board's decision to transfer her to another school upon her return to work was made in consideration of the health and safety of all individuals involved. The teacher's psychologist testified at the hearing but conceded that she could not take the position that her patient was not able to be transferred to another school due to her mental health as she did not suffer from any mental health condition that prevented such a transfer. Therefore, the Tribunal similarly found that the teacher failed to provide evidence of a disability-related need to be transferred. Lastly, the teacher claimed that the school board's calls to the police were discriminatory and the Tribunal concluded that they were made in good faith due to safety concerns regarding the principal. The application was dismissed.

This decision is a good reminder that there are practical limits to an employer's duty to inquire, a relatively new duty that an employer may be required to fulfill if they become aware that an employee may be suffering from a disability. Once an employer takes certain steps to address the situation, such as asking for medical documentation and restrictions, depending on the circumstances, that duty may end there and it then is up to the employee to provide information and participate in the accommodation process.

We welcome your comments and questions. Send them, and any updated contact information, to jessica.koper@shibleyrighton.com. If you wish to unsubscribe to this eBulletin, please send a blank e-mail to christen.broadbent@shibleyrighton.com

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² at para. 61.