

**IN THE MATTER OF AN ARBITRATION
PURSUANT TO THE *LABOUR RELATIONS ACT, 1995***

BETWEEN:

**ELEMENTARY TEACHERS' FEDERATION OF ONTARIO.
"THE FEDERATION"**

(the Employer)

- and -

**SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 2,
BREWERY, GENERAL AND PROFESSIONAL WORKERS' UNION (MOORE)
"SEIU"**

(the Union)

GAR-16158-2025

Sole Arbitrator Kelly Waddingham

APPEARANCES

For the Employer: Allison Taylor – Counsel, Stringer LLP

For the Union: Taylor Akin – Legal Counsel & Business Agent, SEIU

1. This grievance concerns allegations by the Service Employees International Union (the “SEIU” or the “Union”) that the Elementary Teachers’ Federation of Ontario (the “ETFO”, the “Federation”, or the “Employer”) harassed and intentionally harmed the grievor (“Ms. Moore” or the “grievor”) by “continuously” failing to accommodate her in the workplace. The SEIU contends that the ETFO’s actions in respect of Ms. Moore violate Article 6.4.1, Article 14 and Appendix D of the parties’ collective agreement, the Ontario *Human Rights Code*, and/or other applicable provisions of the collective agreement or legislation.

2. The dispute between Ms. Moore and the Federation over workplace accommodation has a long history. Since 2014, Ms. Moore has sought to be allowed to work from home at least one day a week. This accommodation and others have been provided and withdrawn in the years since.

3. Ms. Moore’s most recent request for accommodation was made on March 1, 2025, by way of a letter to the Federation from her treating physician, Dr. Joseph Yuh. As set out in the letter (and in subsequent correspondence between Ms. Moore and the ETFO), the need for accommodation arises from a combination of physical and psychological conditions that are exacerbated by environmental factors and Ms. Moore’s experiences in the workplace. The psychological conditions referred to in the letter include anxiety, depression, and claustrophobia. The Federation denied the accommodation request in a letter to Ms. Moore dated March 18, 2025. The SEIU filed a grievance on May 30, 2025. As well as the requested accommodation and other remedies, the SEIU is seeking “human rights-related general damages”.

4. This preliminary award concerns a request for an order for production by the ETFO. It follows an order for production I made on September 2, 2025. The Federation now asks that I direct the Union to provide its counsel with unredacted copies of records produced pursuant to the September 2 order. The Federation also seeks records that the SEIU agreed to produce (prior to the order), but has thus far failed to provide.

BACKGROUND

5. On July 15, 2025, counsel for the Federation made a request to the SEIU for Ms. Moore’s “complete clinical records for 2025 related to her disability and her 2025 request for accommodation”. Counsel pointed out that at that time, the only medical documentation provided to the Federation in support of the accommodation request was Dr. Yuh’s letter of March 1, 2025. Counsel stated that the Federation also required all emails between Ms. Moore and Dr. Yuh, and between SEIU counsel and Dr. Yuh, related to the content of the March 1 letter.

6. On July 25, 2025, counsel for the SEIU received from Dr. Yuh’s office electronic copies (PDFs) of the doctor’s medical records regarding Ms. Moore from July 1, 2024 to July 2025. The records were included in the Union’s Book of Documents, which the Union subsequently provided to both me and counsel for the ETFO.

7. At a hearing held on July 28, 2025, I asked the parties to set out for me – in writing – the documents they wanted produced by the opposing party. At that time, I indicated to the Federation that I had already requested that counsel for the SEIU make efforts to obtain emails between Dr. Yuh (or his office) and Ms. Moore (or the Union) relating to Dr. Yuh's March 1 letter and the matter of accommodation generally.

8. On July 30, 2025, counsel for the SEIU sent an email to Dr. Yuh's office thanking it for providing Ms. Moore's clinical records, and asking it to provide "any/all email correspondence between your office and [Ms. Moore] from July 1, 2024 to the present". Counsel followed up on this request with email enquiries on November 26, December 12, and December 29, 2025. Following the last enquiry, she received a reply stating, "Unfortunately Dr. Yuh do not [*sic*] have any saved email correspondence on file". To date, the only email between Dr. Yuh's office and Ms. Moore that has been produced is an email to Ms. Moore stating the fee for the March 2025 accommodation letter.

9. In a letter dated August 1, 2025, the Federation requested an order for production of the clinical notes and records of the therapist Ms. Moore saw pursuant to the terms of settlement of a harassment complaint she made against the ETFO in November 2021, and the clinical notes and records of "any practitioner of any kind" who treated Ms. Moore for "emotional stress or distress arising from the workplace" since she filed her November 2021 complaint.

10. In a letter dated August 8, 2025, the SEIU set out its position with respect to the order sought by the ETFO, as well as the documents the Union sought to have produced. In its letter, the SEIU also advised that it had asked Ms. Moore to search for emails between herself and Dr. Yuh's office, and that it had asked Dr. Yuh's office to search for any and all correspondence between the office and Ms. Moore from July 1, 2024 to the present date. The SEIU reported that the emails it obtained from Ms. Moore were produced to the Federation on July 24, 2025. It told the Federation that it would produce the emails provided by Dr. Yuh's office once it had received them.

11. On September 2, 2025, I made an order directing that:

1. SEIU produce clinical notes and records of the registered psychotherapist identified on the receipts submitted to the ETFO for reimbursement (dated April 9, May 7, May 14 and May 21, 2025). The notes/records should be redacted so as to disclose only discussion of matters concerning the grievor's experience of the workplace;
2. SEIU produce clinical notes and records of any registered medical or mental health practitioner who has, subsequent to November 22, 2021, treated the grievor for emotional stress or emotional distress arising from the workplace. The notes/records should be redacted so as to disclose only discussion of matters concerning the grievor's experience of the workplace; and,

3. ETFO produce unredacted copies of the Minutes of Settlement and the Investigation Report associated with the grievor's November 22, 2021 complaint of workplace discrimination and harassment.

12. On December 1, 2025, the SEIU provided the Federation with records responsive to directions 1 and 2. However, the Federation found the records to be more heavily redacted than it expected. On December 11, 2025, counsel for the Federation sent a letter to me (copied to SEIU counsel) advising me of the extent of the redactions, and requesting the opportunity to present further argument on the issue of production, and its need for unredacted copies of the records. The records are from the following services/practitioners:

1. Rooted In Resilience (Felicia Fischhoff, Registered Psychotherapist);
2. Embrace Well Psychological Services (Flana Andrews, Registered Psychologist),
3. East GTA Family Health Team (Jyotica Kumar, Social Worker); and
4. Dr. Joseph Yuh.

13. The "Rooted In Resilience" records (the "Fischhoff records") are responsive to the first direction in the Order. The remaining records (the "Andrews records", the "Kumar records" and the "Yuh records") are responsive to the second direction.

14. By letter dated December 29, 2025, ETFO counsel informed me that she had not yet been provided with emails between the grievor and Dr. Yuh regarding the accommodation request. Counsel reported that she had received emails from SEIU counsel indicating that the Union's efforts to obtain the emails had to that point been unsuccessful.

ARGUMENT

The Federation's position

15. The Yuh records produced pursuant to the September 2 order are clinical notes for the period July 20, 2022 to September 25, 2025. There are no clinical notes provided for the period between October 11, 2024 and May 15, 2025. The Federation points out that, in the notes that were produced, discussion of matters that appear (from treatment codes) to pertain to "psychological factors" are redacted. These discussions, it contends, are particularly relevant to issues in dispute in this case. The Federation also points out that a clinical note dated April 25, 2023 refers to a proposal by Ms. Moore that she seek to work from home three days a week. However, it says, the doctor's notes (of that date) that precede the reference are entirely redacted. The Federation submits that the medical circumstances giving rise to the proposed accommodation "are germane to the

relationship between work-related and non-work-related stressors” in respect of the March 2025 accommodation request.

16. With respect to the other records, the Federation maintains that the redactions – particularly those in the Fischhoff and Andrews records – make it clear that the grievor has “other significant concerns” in her life apart from mental stress related to the workplace. It contends that the other concerns for which Ms. Moore sought counselling for emotional stress/distress could have an impact on both the issue of liability (i.e., the merits of the grievance) and the quantum of general damages to be awarded if the grievance is made out. The Federation submits that it can only properly defend itself in respect of these issues by having the opportunity to review the unredacted records. Such review, it says, would assist it in determining whether cross-examination of Ms. Moore and her treating practitioners is required on the extent and impact of other emotional stressors, relative to those relating specifically to the workplace.

17. The Federation maintains that the phrase “personal matters unrelated to the workplace” (September 2, 2025 decision, para. 29) was not intended to capture personal matters having an effect on the grievor’s mental state *in the workplace*. Such matters, it insists, *are* related to the workplace dispute. The Federation asserts, further, that it is necessary to inquire into the other sources of the grievor’s mental stress/distress to determine the degree to which the workplace plays a role in that condition. Thus, it says, redaction should be limited to personal matters unrelated to mental stress/distress. The Federation contends that redaction “sufficient to ensure the grievor’s privacy is not invaded more than is necessary for the purposes of this hearing” (para. 29) implies that some privacy will necessarily be lost with respect to the cause and extent of the grievor’s mental stress/distress. Personal embarrassment, it submits, is not sufficient reason to permit the redaction of relevant information.

18. The Federation maintains that it cannot argue the impact of the “absence of content” (in this case, content regarding the cause and extent of the grievor’s mental stress) from its absence alone. In other words, the Federation says, pointing out the extent of the redactions is not, by itself, a sufficient defence. Understanding the nature of the redacted passages, the Federation insists, is necessary for it to explore “inferential links” that may support its defence.

19. The Federation further asserts that as the grievor’s emotional stress/distress in relation to the workplace is at issue in this proceeding, the extent to which it is associated with other matters is directly relevant to the accommodation issue and whether general damages are warranted (and, if so, their quantum). Accordingly, the Federation asks me to order the Union to provide its counsel with unredacted copies of the records produced pursuant to the September 2, 2025 decision. Acknowledging the very personal nature of medical records, the Federation does not object to limitations being placed on it with respect to the distribution of such documents within the organization.

20. The Federation maintains that the emails between the grievor/Union and Dr. Yuh and/or his office are directly related to evidence Dr. Yuh will give with respect to his

March 1, 2025 letter and the accommodation request. They are important, the Federation says, because in the clinical notes produced to it there are no references to the March 2025 accommodation request. The Federation points out that a 2024 accommodation letter (at issue in a separate grievance, and purportedly drafted by the Union) was discussed in emails between Ms. Moore and the doctor's staff. The Federation suggests that similar emails regarding the March 2025 letter may also exist and, if so, would shed light on the authorship of the letter and what was asked of Dr. Yuh. It would be unreasonable, the Federation asserts, for it to have to cross-examine the doctor on these matters without having access to the emails. The Federation asks me to order both Ms. Moore and Dr. Yuh to produce all communications between them (or between SEIU counsel and Dr. Yuh) in 2025 relating to the March 1 letter and the issue of accommodation.

21. The Federation maintains that notwithstanding the wording of subsection 48(12)(b) of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A (the "Act"), I have authority to order Dr. Yuh to produce the communications it seeks. It asserts that an order to produce documents is a "procedural order" that would compel a non-party to participate in the proceeding, but not bind them to its outcome (including any remedy that may flow to a party to the proceeding). The Federation contends that I have the authority to make such an order pursuant to my "broad procedural power" under subsection 48(12)(i) of the Act (i.e., "to make interim orders concerning procedural matters").

22. In support of its argument, the Federation referred to the following decisions: *Jones v. I.F. Propco*, 2018 ONSC 23 (CanLII); *J.E. and S.E. v. Metrolinx and Boca Construction LTD.*, 2023 ONSC 7503 (CanLII); *Kivell v. Chatham-Kent Children's Services et al.*, 2023 ONSC 5997 (CanLII); *Robinson v. United Steelworkers*, 2011 HRTO 1617 (CanLII); *London Life Insurance Company v. Dubreuil Brothers Employees Association*, 2000 CanLII 5757 (ON CA); and, *Mexico v. Cargill, Incorporated*, 2011 ONCA 622 (CanLII).

The Union's position

23. The Union's primary position on the issue of production and redaction (at this stage of the hearing) is that it is *res judicata*. The Union maintains that questions of what documents should be ordered produced and what redactions they should be subject to have already been decided. The Union submits that in my September 2 order, I considered the needs of the Employer (in terms of its ability to make its case) and the privacy interests of the grievor, and determined that the records were to be redacted so as to disclose "only discussion of matters concerning the grievor's experience of the workplace". That, the Union contends, is what has been produced. The records produced, it says, satisfy the September 2 order.

24. With respect to the Yuh records, the Union points out that Dr. Yuh's clinical notes and records pertaining to the grievor were previously provided – in unredacted or less redacted form – in its Book of Documents. Clinical notes for visits and consultations between October 11, 2024 and May 15, 2025, it says, are amongst them.

25. The Union further submits that neither it nor the grievor has not put the grievor's "non-workplace stressors" at issue in this proceeding. It says that if the Federation wishes to make an argument that work was not the only source of stress in the grievor's life, it can do so with the records as provided. The Federation, it asserts, is not entitled to know the details of "personal stressors" that are unrelated to the workplace. The Union maintains that the Federation need only know that the workplace environment does, in fact, affect the grievor's mental health. Apprised of that, the Union says, the Federation can make its case that its conduct towards the grievor is not a factor in the stress she experiences in the workplace.

26. The Union asserts that the test for production is whether the information contained in the documents is arguably relevant to the issues in dispute, not simply whether it is "helpful" to the party seeking its disclosure. It maintains that the records produced to date meet that requirement. The Union allows that if something else is put in issue as the hearing progresses, the matter of production may need to be revisited. However, in respect of what has been put at issue to date, the Union contends that the matter of production has already been decided. The September 2 order, it asserts, cannot be revisited.

27. In respect of medical records, the Union contends that an arbitrator should decline to order production until the point in the proceedings when the information they contain, in fact, becomes necessary. Should that time come, the Union asserts, the arbitrator should favour a "minimally invasive approach" that considers the requirements of the hearing and the nature of the records at issue. It contends that where the records at issue are "inherently personal in nature", a standard higher than "arguably relevant" should be applied. Mental health records, the Union contends, should be subject to this higher standard.

28. The Union submits that should I determine that the medical records – in their unredacted form – are necessary to make argument (and a determination) regarding general damages, arrangements for their production can be discussed at that time. In the alternative, the Union submits that should I find that production of unredacted (or less redacted) copies of records is necessary now, I should place strict parameters on what information is disclosed, and how many copies of the records are provided and who is entitled to see them.

29. With respect to the email communications between Dr. Yuh (or his office) and Ms. Moore, Union counsel points out that she made several requests for such communications, but ultimately received only one reply (on December 29, 2025, advising her that the office did not have "any saved email correspondence on file"). Counsel advises that on December 30, she asked Dr. Yuh's office to confirm whether or not it had searched its server for the emails, but did not receive a reply. Counsel insists that the Union has acted on the request for the emails, but ultimately has no authority to compel Dr. Yuh's office to take further steps to locate the emails (should they exist).

30. Counsel points out that the letter submitted to the Federation with the 2024 accommodation request was from a different doctor. She also points out that the emails relating to that letter were freely provided to the Federation. Counsel asserts that in this instance, there is no reason to suspect that either Ms. Moore or the Union is withholding the emails.

31. The Union submits that I have no authority to order Dr. Yuh to produce the emails. It points out that (as was noted by the Federation), subsection 48(12)(b) of the *Labour Relations Act, 1995* does not empower an arbitrator to order production of documents from third parties. The Union points out, further, that while Article 27.9 of the Collective Agreement expands the powers of an arbitrator appointed under the agreement, it does not give the arbitrator the power to order production from a third party. The Union submits that Article 27.9, in combination with subsection 48(12) of the Act should be viewed as establishing the “outer limits” of the authority of an arbitrator appointed under this collective agreement. Should the parties have wished to expand an arbitrator’s jurisdiction to include ordering production from third parties, the Union asserts, they would have done so. In the circumstance, the Union submits, the Federation’s only recourse to obtain any emails from Dr. Yuh is to obtain a subpoena *duces tecum* so that they might be produced at the hearing.

32. The Union referred me to the following decisions: *Carleton University v. Carleton University Academic Staff Assn. (Professor S. Grievance)*, 2019 CarswellOnt 12873; *Oliver Paipoonge (Municipality) v. L.I.U.N.A., Local 607*, 1999 CarswellOnt 3359; *George Brown College of Applied Arts and Technology v. Ontario Public Service Employees Union*, 2016 CarswellOnt 16328; and, *Toronto District School Board v. E.T.F.O.*, 2011 CarswellOnt 9713.

The Federation’s reply

33. In reply, the Federation acknowledged that it does, in fact, have Dr. Yuh’s clinical notes created between October 11, 2024 and May 15, 2025 (in the Union’s Book of Documents). However, it says that a review of those records confirmed that they contain no references to the March 1, 2025 letter, nor to any discussions between Ms. Moore and Dr. Yuh regarding accommodation in the workplace. This, the Federation asserts, makes the need for emails between Ms. Moore (or the Union) and the doctor even greater. The Federation also asserts that any communications from Dr. Yuh that were forwarded by Ms. Moore to the Union should also be produced.

34. The Federation disputes the proposition that, as an order has been made, the matter of documentary production is *res judicata*. The doctrine of *res judicata*, the Federation submits, applies to a matter that is “finally decided”, so as to prevent it from being relitigated. The Federation contends that the matter of documentary production is inherently “interim”, and not “final”. It submits that the fact that the Union is suggesting that documentary production can be delayed to later stages of the proceeding shows that production orders are never final. Produced documents, the Federation submits, may make certain issues more germane to the proceeding than they were understood to be at

the time of the order. This is especially so, it says, in circumstances where documents are redacted. The Federation posits that upon making an order, and seeing what the results are of that order, an arbitrator is entitled to determine – as an interim matter – whether an additional order is necessary.

35. The Federation contends that the extent of the redactions suggests that there is “much else going on here” that is relevant to the issue of mental distress. Limiting disclosure to matters related to “workplace mental distress” when causation is an issue, it asserts, is simply too narrow in light of what has been produced. It also takes issue with the notion that further disclosure can be delayed until later in the proceeding. It maintains that evidence regarding the sources of the grievor’s mental distress is relevant not only to the question of damages, but also to the question of “causation” (and, thus, liability). It is unrealistic, the Federation asserts, to say that whatever else is going on in the grievor’s life is irrelevant to question of causation and the reasons for the request for accommodation. It is also, the Federation submits, unfair for it to have to defend itself against an allegation that the workplace is the source of distress (necessitating an accommodation) without knowing the other stressors the grievor is dealing with concurrently.

36. The Federation asserts that as the grievor has put her mental state at issue in this proceeding, disclosure of documents relating to it should not be subject to a standard higher than “arguably relevant”. Her mental state, the Federation contends, is central to this case.

ANALYSIS

The Federation’s request for unredacted clinical notes and records

37. As set out above, the Federation (in August 2025) asked me to make an order requiring the grievor to produce “all clinical notes and records” of the therapist she saw pursuant to the terms of settlement of her November 2021 harassment complaint against the Federation, and the “clinical notes and records of any practitioner of any kind who has treated [her] for emotional stress or emotional distress arising from the workplace” since November 2021. In its submissions to me in support of its request for an order, the Federation stated that “redaction of personal issues in these records unrelated to the workplace would be acceptable to [it] to avoid undue invasion of the grievor’s privacy”.

38. At the time she made her request for accommodation, the grievor provided the Employer with a letter from her doctor (Dr. Yuh) setting out the physical and psychological conditions the grievor was experiencing that supported the specified accommodation (i.e., that she be allowed to work from home one day a week, and other days as needed). The letter stated that “the work environment itself” was causing the grievor “emotional stress” that, in turn, was exacerbating her “anxiety and depression” and her medical conditions (principally, lupus). In subsequent correspondence to the Employer, the grievor also identified emotional stress relating to the workplace as a basis for her accommodation request. In consequence, I determined in my award that the grievor had

put her “mental health and emotional stress (insofar as they relate to her experience in the workplace) in issue” (para. 28).

39. In the award, I found that the clinical notes and records sought by the Federation met the requirements for production generally applied by arbitrators (in particular, those set out in *West Park Hospital and O.N.A., Re*, 1993 CanLII 16806 (ON LA)). I found that the records “either go directly to [the issue of workplace-related stress] or provide an inferential link to support a theory of the case or a line of defence” (para. 28). I proceeded to order the SEIU to produce the notes and records of the psychotherapist associated with four treatment sessions for which the grievor sought reimbursement from the Federation (pursuant to the terms of the settlement agreement), and the notes and records of any registered medical or mental health practitioner who treated the grievor for “emotional stress or distress arising from the workplace” since November 2021. In respect of both orders, I directed that the notes/records “should be redacted so as to disclose only discussion of matters concerning the grievor’s experience of the workplace”.

40. The Federation does not assert that the orders for production do not capture what it asked for in its original request. Rather, it contends that as the records it received pursuant to the order are heavily redacted, they show that the grievor “had extensive other concerns which troubled her sufficiently to lead her to seek counselling”. The Federation maintains that the other concerns for which the grievor sought counselling for emotional distress “could well have an impact on both the issue of liability and the quantum of damages”. Accordingly, it now takes the position that sources of the mental stress and/or mental distress experienced by the grievor other than the workplace are relevant to matters at issue in the proceeding.

41. As I pointed out at paragraph 27 of the September 2 award, the principal allegation in the grievance is that the Employer harassed and intentionally harmed the grievor by failing to accommodate her in the workplace. References to Article 6.4.1 of the Collective Agreement and the *Human Rights Code* in the grievance letter mean that the grievance also alleges that the Employer discriminated against the grievor by failing to provide the accommodation. The Anti-Harassment Policy set out in Appendix D of the Collective Agreement states:

Harassment on the basis of a prohibited ground is a violation of the Ontario Human Rights Code and is illegal. The Elementary Teachers’ Federation of Ontario will not tolerate any form of harassment in the workplace.

42. The Policy defines harassment as:

[...] engaging in offensive behaviour or conduct, on a single or repeated basis, against another person when that behaviour is known to be unwelcome, or unwanted.

43. Subsection 5(2) of the *Human Rights Code*, R.S.O. 1990, c. H.19 provides that every employee has a right to freedom from harassment in the workplace that is based on a prohibited ground. Subsection 10(1) of the Code defines harassment as:

[...] engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

44. Both Article 6.4.1 of the Collective Agreement and subsection 5(1) of the *Human Rights Code* provide that employees/individuals have the right to equal treatment with respect to employment without discrimination because of a prohibited ground.

45. Those being the allegations, the onus is on the Union to establish that the grievor has a disability that requires accommodation, that the Federation was made aware of her disability and failed to make an accommodation, and that its failure to make the accommodation constitutes harassment (as defined above) and/or discrimination. As a start, the Union will have to establish that the grievor does, in fact, suffer from the medical and psychological conditions set out in Dr. Yuh's March 1, 2025 letter. It will also need to show that "workplace stress" exacerbates those conditions, and militates in favour of the accommodation recommended by Dr. Yuh. The Federation's position (it is reasonable to assume) will be that the medical information it was provided (in the accommodation letter and afterwards) does not support the requested accommodation and/or that the accommodation would cause it undue hardship. It could also be expected to argue (if necessary) that its conduct towards the grievor does not constitute harassment or discrimination.

46. The Federation presently has the (mostly) unredacted records of Dr. Yuh for the period August 2, 2024 to July 11, 2025. As it noted in its reply, the records for the months preceding the March 1 accommodation request contain no references to the request letter, nor to discussions between the grievor and Dr. Yuh regarding workplace accommodation. The Federation pointed out that Dr. Yuh's clinical note of April 25, 2023 contains a reference to a proposed workplace accommodation. It appears in a section of the note that is unredacted. The section reads:

Work issue. She currently works at an office. She has significant medical issues. She is requesting 3 days work from home, then two days on site. Multiple medical issues including atrial fibrillation. Lupus pneumonia. It's a trap. Reasonable request. I will do a medical letter. See what pans out.

The paragraph begins with "work issue". In my view, it is unlikely that the redacted information that precedes that text concerns the proposed accommodation, or includes anything that is relevant to the March 2025 accommodation request or to issues raised in this grievance.

47. The Fischhoff and Kumar records are, indeed, quite heavily redacted (the Andrews records are only lightly redacted). However, in my view, access to the redacted information in the records will not appreciably enhance the Federation's ability to argue its case. In making its defence, the Federation need only point out that the records – as redacted – do not support the grievor's claim that conditions in the workplace (and their effect on her health) necessitate the accommodation.

48. The relevance of the requested documents was thoroughly canvassed for the purposes of the production order. It was determined at that time that only certain information the documents *might* contain was relevant to matters at issue in the dispute. Redactions to the documents were directed on that basis. In my view, those redactions meet the requirements set out by the Ontario Superior Court (for civil disputes) in cases such as *Jones v I.F. Propco Holdings, supra*, and *J.E. and S.E. v Metrolinx, supra*. The information intended to be redacted (i.e., discussions of matters unrelated to the workplace) is irrelevant *and* there is good reason for its redaction (it is highly personal). Given the onus on the merits of the grievance, it must be assumed that the redactions that were in fact made to the documents meet the requirements of the order (i.e., that they disclose any discussion of – or comments regarding – the grievor’s experience of the workplace).

49. For these reasons, I will not, at this time, order production of unredacted copies of records produced pursuant to my September 2, 2025 order. I will not permit the Federation to relitigate my previous conclusion on this issue. If new relevant documents surface during the course of the hearing, I will deal with them if and when necessary.

The Federation’s request for an order to produce emails

50. Since the summer of 2025, the Federation has been seeking to obtain copies of emails from Dr. Yuh (or his office) to the grievor (and/or the Union) that relate to Dr. Yuh’s March 1, 2025 accommodation request letter. It appears that neither the grievor, nor the Union has copies of such emails (if they exist). Counsel for the Union made repeated requests to Dr. Yuh’s office in the last half of 2025 to provide her with copies of any such emails. Apart from an email setting out the fee for the March 1 letter, no emails were provided. Staff at Dr. Yuh’s office advised that it did not have “any saved email correspondence on file”. The Federation requests that I make an order directing Dr. Yuh or his office to produce emails sent to the grievor or the Union between July 1, 2024 and July 30, 2025. It submits that I have jurisdiction to make such an order. The Union contends that I do not.

51. I am not persuaded that I have authority to order Dr. Yuh to produce documents for the purposes of this hearing. Subsection 48(12)(b) expressly gives an arbitrator the power “to require any *party* to produce documents or things [...] before or during a hearing” [emphasis added]. As pointed out by Arbitrator Bendel in *George Brown College, supra* (at para. 11), “it is abundantly clear from a reading of the Act as a whole that the parties to an arbitration are the employer and the union”. Given the presence (and specificity) of that provision, subsection 48(12)(i) (which gives an arbitrator the power “to make procedural orders regarding procedural matters”) cannot be read so as to confer on an arbitrator the power to direct a *non-party* to produce documents in their possession in advance of a hearing. This finding accords with the findings of the arbitrators in *George Brown College* and *Toronto District School Board, supra*.

52. Jurisdiction to make a production order against a third party also cannot be found in the Collective Agreement. Article 27.9, as noted by the Union, sets out additional powers of an arbitrator (or arbitration board) appointed under the Agreement. It provides:

27.9 An Arbitrator or an Arbitration Board as the case may be, has the powers as outlined in the *Labour Relations Act* and in addition has the power,

- a) To accept such oral or written evidence as it in its discretion considers proper, whether admissible in a court of law or not; and
- b) Where it determines that an employee(s) has had employment terminated or has been demoted or disciplined for just and sufficient cause, to substitute a penalty where it considers it just and reasonable in the circumstances to do so; and
- c) To extend the time for taking any step in the grievance or Arbitration procedures, including the submission to Arbitration, notwithstanding the expiration of such time, where in its discretion considers it proper to do so; and
- d) To grant interim orders, including interim relief as the Arbitrator or Arbitration Board considers proper, including interim reinstatement; and
- e) To enforce written settlement agreements.

Clearly, none of these powers authorizes an arbitrator to order production from a third party.

53. Accordingly, I find that I do not have jurisdiction to order Dr. Yuh or his office to produce emails (or any other documents) for the purposes of this proceeding. As pointed out by the Union, the Federation may seek a subpoena *duces tecum* against Dr. Yuh compelling him to bring copies of the emails with him when he testifies at the hearing.

54. While making its argument on jurisdiction, the Federation raised a concern regarding the summons issued to Dr. Yuh in August 2025. Upon reviewing a draft version of the summons, the Federation discovered that the summons makes no reference to Dr. Yuh's records regarding Ms. Moore. The Federation submits that, by virtue of section 12 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, a summons should properly include the requirement that the person summoned bring any and all relevant documents to the hearing. The Federation proposes that the summons be reissued with the requirement that Dr. Yuh bring with him documents relevant to the 2025 accommodation request and his March 1, 2025 letter. I accept this suggestion and direct the Union to re-issue the summons.

Dated, this 22 January, 2026 in the City of Toronto.

"Kelly Waddingham"

Kelly Waddingham