

**IN THE MATTER OF A MEDIATION/ARBITRATION
BETWEEN**

HYDRO ONE INC.

(“Hydro One”)

and

POWER WORKERS’ UNION

(the “PWU”)

MONTHLY MEDIATION/ARBITRATION

GRIEVANCE NUMBERS: HO-WS-2008

CHIEF ARBITRATOR: John Stout

APPEARANCES:

For Hydro One:

Daniel McDonald, Norton Rose Fulbright Canada LLP

For the PWU:

Donald K. Eady, Paliare Roland LLP

Kate Shao, Paliare Roland LLP

HEARING HELD IN TORONTO, ONTARIO ON OCTOBER 1, 2025

AWARD

1. The parties appeared before me on October 1, 2025, for the monthly grievance mediation/arbitration hearing. Prior to the hearing the parties filed extensive written briefs. This award addresses grievance **HO-WS-2008** (the “grievance”).
2. The grievance was filed by the PWU alleging that Hydro One violated the Collective Agreement and the Ontario *Human Rights Code* (the “Code”) by failing to accommodate Corrine Conley (the “Grievor”) based on family status by rejecting her request to work from home on a permanent full-time basis.
3. Essentially, the Grievor seeks to work from home full-time to care for her ailing spouse. There is no dispute that the Grievor’s spouse suffers from a disability, and he requires assistance with daily tasks, such as food preparation and transportation to medical appointments.
4. During the COVID-19 pandemic, the Grievor was provided temporary accommodation to work remotely on a full-time basis. Hydro One advises that this accommodation was granted on the understanding that there were a lack of available private support workers and a risk of infection for her spouse who is immunocompromised. Hydro One takes the position that the accommodation is no longer medically necessary or required as there are now various options available for providing the Grievor’s spouse with the necessary support he requires.
5. The Grievor is a Provincial Services Clerk, and her position is subject to Hydro One’s Hybrid Work Policy, which requires a minimum of two days per week in-person attendance at the workplace and up to three days of work from home.
6. In addition to having a grievance filed, the Grievor has filed an application with the Human Rights Tribunal of Ontario (HRTO) on June 25, 2025 (HRTO File No. 2025-61951-I). The HRTO application essentially mirrors the complaint made in the grievance and seeks similar remedies.

7. There can be no dispute that I have exclusive jurisdiction to resolve the grievance, see s. 48 of the *Labour Relations Act, 1995* as amended and *Weber v. Ontario Hydro* [1995] 2 SCR 929. In addition, pursuant to ss. 48 (12)(j) I have jurisdiction to interpret and apply human rights and other employment related statutes. The Supreme Court of Canada (“SCC”) has said that grievance arbitrators in Ontario not only have the power, but also the responsibility to implement and enforce the substantive obligations of human rights legislation as if it was part of the collective agreement, see *Parry Sound (District) Social Services Administration Board v. OPSEU, Local 324* [2003] 2 SCR 157.

8. More recently, in *Northern Regional Health Authority v. Horrocks* [2021] 3 SCR 107, the SCC has confirmed the exclusive jurisdictional model and indicated that in unionized environments one must look at the legislation and the nature of the dispute to determine if there is overlapping, concurrent or exclusive jurisdiction.

9. The *Code* includes a provision that specifically contemplates the jurisdiction of a labour arbitrator to decide issues arising under the *Code*, see s. 45.1. In the normal course, the HRTO will adjourn applications where there is a grievance arbitration proceeding taking place that addresses essentially the same complaint as the HRTO application. This is a reasonable and practical decision to preserve precious public resources. The HRTO usually retains jurisdiction to address whether the arbitration proceeding appropriately dealt with the substance of the application, see *Strom v. Hydro One* 2024 HRTO 1078.

10. This matter initially came before me on July 9, 2024, and a mediated interim settlement was reached, whereby the Grievor was accommodated in a temporary Homeworker arrangement.

11. Homeworkers are paid 10% less than those employees who are required to attend at the workplace. In addition, Homeworkers also have restrictions on location to ensure a commute of under 100 km/1 hour to the regular work location. There is also an expectation that the Homeworker attends up to 25 days in-office.

12. The PWU is now seeking a permanent accommodation on behalf of the Grievor to work from home, as well as reimbursement for lost wages (the 10% Homeworker reduction in pay), removal of the location restrictions in the Homeworker arrangement to move closer to her daughter, and a direction that the Grievor be permitted to attend quarterly safety meetings virtually. In the alternative, the PWU seeks a work opportunity for the Grievor in the Perth area.

13. Hydro One asserts that the PWU is seeking “exceptional remedies that far exceed the duty to accommodate. Hydro One insists that the Grievor ought to be required to investigate other options to assist in the care of her spouse.

14. The parties were unable to resolve the dispute in mediation today. I am of the view that setting out the appropriate legal principles may help the parties to have a further discussion on how to possibly resolve the impasse without the need of my further intervention.

15. First, it has been accepted that the protected ground of “family status” includes a parent’s responsibility to take care of a child, see *Canada (Attorney General) v. Johnstone* 2014 FCA 110. I accept that the need to care for one’s spouse, if they are vulnerable and have a disability, may also be included in this protected ground. However, I also believe that when seeking a permanent accommodation, the requirement found in *Johnstone, supra*, of providing evidence of reasonable efforts to make reasonable alternative arrangements for care may also apply to those seeking permanent accommodation to assist with caring for their spouse.

16. In terms of workplace rules or conditions that may be a *bona fide* occupational requirement, the Supreme Court of Canada (SCC) set out the test for a bona fide occupational requirement, which includes the duty to accommodate in *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999 CanLII 652 \(SCC\)](#), [1999] 3 S.C.R. 3 (“*Meiorin*”). In setting the test for a *bona fide* occupational requirement in *Meiorin*, the SCC indicates that: [a]n employer may justify the impugned standard by establishing on the balance of probabilities:

(1) that the employer adopted the standard for a purpose rationally connected to the performance of the job;

(2) that the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment of that legitimate work-related purpose; and

(3) that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer. [para. 54]

17. In *Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, [2008 SCC 43](#), [2008] 2 S.C.R. 561, at paras. [12 and 16](#), the SCC elaborated on the undue hardship criteria:

What is really required is not proof that it is impossible to integrate an employee who does not meet a standard, but proof of undue hardship, which can take as many forms as there are circumstances.

...

The test is not whether it was impossible for the employer to accommodate the employee's characteristics. The employer does not have a duty to change working conditions in a fundamental way, but does have a duty, if it can do so without undue hardship, to arrange the employee's workplace or duties to enable the employee to do his or her work.

18. In *Central Okanagan School District No. 23 v. Renaud* [1992] 2 SCR 970, the SCC further commented on the accommodation process and the duty of a complainant:

The search for accommodation is a multi-party inquiry. Along with the employer and the union, there is also a duty on the complainant to assist in securing an appropriate accommodation. The inclusion of the complainant in the search for accommodation was recognized by this Court in *O'Malley*. At page 555, McIntyre J. stated:

Where such reasonable steps, however, do not fully reach the desired end, the complainant, in the absence of some accommodating steps

on his own part such as an acceptance in this case of part-time work, must either sacrifice his religious principles or his employment.

To facilitate the search for an accommodation, the complainant must do his or her part as well. Concomitant with a search for reasonable accommodation is a duty to facilitate the search for such an accommodation. Thus in determining whether the duty of accommodation has been fulfilled the conduct of the complainant must be considered.

This does not mean that, in addition to bringing to the attention of the employer the facts relating to discrimination, the complainant has a duty to originate a solution. While the complainant may be in a position to make suggestions, the employer is in the best position to determine how the complainant can be accommodated without undue interference in the operation of the employer's business. When an employer has initiated a proposal that is reasonable and would, if implemented, fulfil the duty to accommodate, the complainant has a duty to facilitate the implementation of the proposal. If failure to take reasonable steps on the part of the complainant causes the proposal to founder, the complaint will be dismissed. The other aspect of this duty is the obligation to accept reasonable accommodation. This is the aspect referred to by McIntyre J. in *O'Malley*. The complainant cannot expect a perfect solution. If a proposal that would be reasonable in all the circumstances is turned down, the employer's duty is discharged.

19. Based on the SCC decisions, the protections found in the *Code* are related to fostering equality and diversity, they do not involve providing special treatment or personal preferences. Accommodation is about inclusion in the workplace, not providing additional benefits or preferences to certain employees. The duty to accommodate involves all parties working towards a reasonable resolution that will allow the employee to participate in the workplace and earn a living. If the employer provides a reasonable accommodation that addresses the Grievor's needs, then the duty to accommodate will be met.

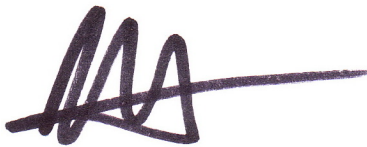
20. It is also worth noting that providing different levels of compensation to different employees is not in itself discriminatory within the meaning of the *Code*. Prohibited discrimination only occurs when the distinction is based on a prohibited ground. In this regard, it is not prohibited discrimination to distinguish for purposes of compensation between employees who are providing services for the employer

and those who are providing services in a different manner. The duty to accommodate does not generally require employers to compensate employees who are either unable or unwilling to attend work in the same manner as those who can attend work. The duty to accommodate does not fundamentally alter the employment bargain by requiring payment of wages for no work or the same wages work of a different nature, see *Orillia Soldiers Memorial Hospital v. ONA* (1999) 42 OR (3d) 692 (CA), In *Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, *supra*.

21. I encourage the parties to meet and discuss a reasonable accommodation, which may not necessarily provide the Grievor with everything she wants, but does address the Grievor's needs. If the grievance is not resolved by the parties, then the matter is to be scheduled for a hearing on January 14, 2026.

22. I remain seized.

Dated at Toronto, Ontario this 2d day of October 2025.

A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke extending to the right.

John Stout - Chief Arbitrator