

**IN THE MATTER OF ARBITRATIONS UNDER the Labour Relations Act,
1995**

BETWEEN:

Elementary Teachers' Federation of Ontario

("the Union")

- and -

Toronto District School Board

("the Employer")

RE: Grievance of Georgia Collias and Grievance of Sunitha Subramaniam

("the grievors")

ARBITRATOR:

Maureen Doyle

APPEARANCES:

For the Union:

Harold Goldblatt

Anna Goldfinch

Georgia Collias

Sunitha Subramaniam

For the Employer:

Daniel Fogel

Joe Olij

Date: May 10, 2026

INRODUCTION

1. The union has filed grievances on behalf of two members, Georgia Collias and Sunitha Subramaniam, both related to the employer's denial of continued Short Term Leave Disability Plan ("STLDP") leave and pay.
2. This Interim Decision addresses the employer's preliminary request in which it seeks an order for production of certain documents in the possession, power or control of the union and the grievors. While each grievance differs somewhat in its factual background, the basis for the employer's request and the union's resistance to the request are common to both grievances. A hearing date was convened and counsel for the parties provided their submissions, encompassing both grievances. Accordingly, the requests for production in respect of both grievances are dealt with together in this Interim Decision, though the merits of the grievances themselves may be litigated separately. Further, the parties agree to address the issue of requiring the attendance of medical professionals later in these proceedings, should it become necessary to do so.

Background

3. The parties have provided documentation relating to correspondence between the grievors and the employer during the course of and after the Short Term Disability Leave of each grievor, a period which largely may be described as the late summer and the autumn of 2025. Each parties' Book of Documents includes reporting from medical practitioners and other health care professionals regarding the grievors' requests for STLDP leave and pay.
4. Broadly stated, the correspondence indicates that the grievors told the employer they were too unwell to attend at work and sought leave and pay through the STLDP, and the employer asked for medical documentation to substantiate the grievors' need for absence, return to work date, or accommodations. The grievors provided notes and Functional Ability Forms which had been completed by medical practitioners and other health care professionals. In response to each new note or form provided, the employer consistently indicated that the documentation provided was insufficient to establish the grievors' need

for a continued absence. In both cases, the employer ultimately rejected the medical documentation provided.

5. The correspondence provided in connection with Ms. Collias's grievance also includes a November 12, 2025 Reconsideration Decision from the Workplace Safety and Insurance Board ("WSIB"), overturning an initial decision made on October 20, 2025, which had allowed her claim.
6. Following an exchange of emails and provision of notes and Functional Abilities Forms completed by health care professionals, employer documents indicate that it placed Ms. Subramaniam on an "unapproved leave of absence effective November 19, 2025." Her medical documentation provided a date for return to work in the first week of January. A December 11, 2025 email from the employer's Disability Case Administrator to Ms. Subramaniam indicates that a return to work meeting was scheduled for December 15, 2025.
7. Following an exchange of emails and provision of notes and Functional Abilities Forms completed by health care professionals, as well as the WSIB's Reconsideration Decision, documentation provided indicates that the employer placed Ms. Collias on an "unapproved and unauthorized Leave of Absence, effective October 17, 2025". On November 28, 2025, the employer wrote to Ms. Collias stating that it had reviewed "all related medical documentation, WSIB claim, and claim for Short-Term Leave and Disability Plan (STLDP) benefit", and determined that "access to STLDP is not supported at this time". It stated that she was required to return to work on December 8, 2025, and stated that while it remained open to reviewing updated medical information, it was not obliged to "approve a request for accommodation based solely on personal preference or historical arrangements". In a letter dated December 5, 2025, it stated that "a final decision has been rendered that we are able to accommodate your return to work within the provided restrictions". In an email dated December 8, 2025, it thanked her for having provided a further medical note but stated that the "next steps" were as outlined in the November 28, 2025 letter, and stated that it would "not be reviewing any additional medical information at this time".
8. Each grievor has experienced a loss of earnings related to the above-noted events.

9. On December 11, 2025, the union filed individual grievances, one on behalf of Ms. Subramaniam, and one on behalf of Ms. Collias. The grievances differ in as much as they recount the details of each grievor's interaction with the employer regarding their claim for STLDP leave and pay, but both assert that "The TDSB refused to accept the medical notes and the TDSB approved Functional abilities Forms that she provided without a reasonable basis for doing so". They alleged that the employer had provided "inconsistent and shifting rationales to explain why it considered the medical inappropriate", and asserted that

its rejection of the extensive medical reports the member provided constitute a breach of the collective agreement and the member's rights to be accommodated and not subject to discrimination on the basis of disability, pursuant to Ontario's Human Rights Code (the "Code").

10. In respect of remedy, the union states as follows in each grievance:

1. A declaration that the Board has breached the Collective Agreement and the Code by unreasonably disregarding the Members' medical, ordering her to return to the workplace, and denying her entitlement to sick leave;
2. A direction that the Board immediately comply with the Collective Agreement and the Code;
3. An order that the Member be made whole including but not limited to reimbursement of any and all sick leave entitlement the Member was denied;
4. Damages to be assessed; and
5. Any other remedies that the Union or an arbitrator deems appropriate.

11. On April 2, 2026, counsel for the employer wrote to counsel for the union, seeking production of documents "in the possession, power or control of the Union or grievor which are arguably relevant" to each grievance. It stated that in respect of Ms. Collias's grievance, the documents it seeks include but are not limited to:

- All clinical notes and records of any doctors or other health professionals in respect of the disabilities at issue, including Dr. Mary Karantonis and Dr. Christopher Walsh (Michael Garron Hospital);

- Contents of the Workplace Safety and Insurance Board's file(s) in respect of the grievor's claim(s) concerning the disability/disabilities at issue, and correspondence related thereto;
- Contents of the files of any other benefits provider to whom the grievor applied or made claim in relation to the disability/disabilities at issue, and correspondence related thereto; and
- Prescription records in relation to the disability/disabilities at issue.

12. In respect of the grievance of Ms. Subramaniam, it stated that the documents it seeks include but are not limited to:

- All clinical notes and records of any doctors or other health professionals in respect of the disabilities at issue, including Dr. Vivian Chau (Woodbridge Medical Centre), Monica Kim-Taylor (Elysium Psychotherapy), Dhvani Patel (Sports RehabTO), Deepika Gandhi and Dr. Francious Rousseau (Ottawa Institute of Cognitive Behavioural Therapy), and St. Michael's Hospital;
- Contents of the files of any benefits providers to whom the grievor applied or made a claim in relation to the disabilities at issue, and correspondence related thereto; and
- Prescription records in relation to the aforementioned disabilities underlying the grievance.

13. On April 2, 2026, counsel for the union responded to the employer's request for production stating that the union does not intend to provide the requested material. The letter stated that "all of the material related to the conditions of these grievors has been provided to the employer and that the Union does not have anything additional". It also stated, however, that the grievances "involve decisions made by the TDSB based on the medical information that was provided to them and the alleged inadequacy of that information". It stated that the documentation already provided to the employer was sufficient and that in the alternative, if there was a need for further medical information, "the Board failed to provide the specific nature of that requested information to either of the grievors and to give them an opportunity to obtain such information prior to terminating their sick leave." It also

stated that, in accordance with the provisions of the collective agreement, the employer could have asked for an Independent Medical Examination of the grievors.

Submissions of the Parties

14. In resisting the employer's request for disclosure, the union submits that the employer did not request that either grievor undergo an independent medical examination, as provided for in the locally negotiated provisions, nor did it provide specificity to the grievors as to what documentation would be acceptable. Rather, it submits, they presented the grievors with a "moving target", simply asserting that the grievors had not provided objective medical evidence to support their ongoing absences, and required them to return to work. The union noted that this persisted, despite one of the grievors asking them what else they needed in order that she may provide it to them.
15. The union submits, therefore, that the employer has already had the opportunity to obtain further medical information, but did not do so before the arbitration of these grievances, and that the current request for information is a "fishing expedition", causing delay in this process.
16. The employer submits that since the grievances allege that the grievors were totally disabled from work, and they allege a violation of the *Human Rights Code* on the basis of disability, in order to defend against these allegations, it requires the disclosure it seeks. It submits that according to the grievances, this dispute is whether each grievor was actually disabled from work when the employer discontinued sick leave benefits and that they were disabled in a way which the employer could not accommodate. The employer takes the position that the medical documentation provided to it is contradictory and insufficient. Additionally, it takes the position that to the extent either grievor required accommodation, it was in a position to provide accommodation at work. It submits that the union's position is essentially that the employer should accept the medical documentation at face value. Further, it notes that by way of remedy, the union seeks that the grievors be made whole, including sick leave entitlement. It submits that these matters cannot be determined unless there is disclosure regarding the claims of disability. It notes that the union has made clear its concerns with the process it engaged in with the grievors, but it submits nonetheless that the basic question remains whether they were disabled

and entitled to sick leave continuation, and submits that this issue is set out in the grievances.

17. The employer submits that the documents it is seeking are based on the documents that it received from the grievors. It submits that the disclosure it seeks is not unusual in such cases and submits that its request has been narrowly drafted and is not overly intrusive. It notes it has not requested the grievors' entire medical files, and that the only documents it seeks relate to the disabilities at issue. It submits that the union has put the grievors' medical condition into issue and it must have access to the information it has requested in order to mount a complete defence.
18. The employer cited several cases in support of its request for disclosure, each of which I have carefully reviewed. It cited: *Toronto District School Board and C.U.P.E. Loc. 4400 (2001-B-01)*, 2002 CanLII 79047 (ON LA) ("*TDSB v CUPE*"); *Becker Milk Co. v Milk and Bread Drivers Dairy Employees, Caterers & Allied Employees, Loc. 647 Re*, 1996 CanLII 20358 (ON LA), ("*Becker Milk*"); *Canadian Office and Professional Employees Union, Local 343 (Staff Unit) v Ontario of Labour*, 2015 CanLII 67264 (ON LA), ("*COPE v OFL*") ; *Dufferin Concrete v Teamsters Local Union Local 230*, 2015 CanLII 68945 (ON LA), ("*Dufferin Concrete*"); *Peel District School Board and Ontario Secondary School Teachers' , District 19*, 2017 CanLII 96315 (ON LA), ("*Peel District*"); *Greater Essex County District School Board v Canadian Union of Public Employees, Local 27*, 2018 CanLII 125958 (ON LA). ("*Greater Essex County*"); *Ontario Public Service Employees Union (Kopec) v Ontario (Ministry of the Attorney General)*, 2022 CanLII 47251 (ON GSB), ("*Kopec*").

Decision

19. There was no real dispute between the parties regarding the applicable case law and factors to be considered. In listing factors to be considered, in the often-cited decision in *TDSB v CUPE*, the arbitrator states that "a liberal view should be taken with respect to the production of documents". He then provides a list of considerations, noting among other things that all documents which are arguably or seemingly relevant or have a semblance of relevance must be produced.

20. The decision in *Becker Milk* is instructive and also addressed a request for production of medical documentation, and a request that the grievor be required to undergo a medical examination. The arbitrator stated that a review of arbitral jurisprudence indicates the following regarding the disclosure of medical records:

1. In ordering the disclosure of medical records, arbitrators must be sensitive to the fact that such records may include personal and confidential information. In exercising the required discretion, the individual's interest in the non-disclosure of personal and confidential medical information must be balanced with the policy considerations that suggest that disclosure is useful and necessary.

...

2. The information requested must be arguably relevant

3. The information requested must be particularized so there is no dispute as to what is desired.

4. The arbitrator must be satisfied that the information is not being requested as a "fishing expedition".

5. There must be a clear nexus between the information being requested and the positions in dispute at the hearing.

6. The arbitrator must be satisfied that disclosure will not cause undue prejudice.

...

9. An arbitrator has the authority under s. 48(12) of the Labour Relations Act, 1995, S.O. 1995, c. 1, Sch. A, to require the production of medical records, before or during a hearing.

10. An arbitrator carries responsibility to expedite the proceedings, to prevent the abuse of the arbitration process, and to provide a fair hearing. ...

11. Labour arbitration must provide a speedy and efficient resolution for the parties. Arbitration is intended to foster fairness, harmony and sensible labour relations. Anything which can assist in the preparation of cases, the refining of issues or which will facilitate settlement should be encouraged. As a general proposition, pre-hearing disclosure will assist with all these matters and should occur wherever possible.

12. If the positions taken by the parties on the merits of the case make it inevitable that certain evidence will be compellable during the course of the hearing, there is little to be gained by objecting to releasing that information prior to the hearing. More often than not a person's interests can best be served by tactics designed to expedite a hearing.

13. Each party is entitled to know in advance the case it has to meet, so that it can prepare its evidence and submissions.

...

21. In the instant case, the union emphasized that the decision in *Becker* states that because medical information is personal and confidential, disclosure must be "useful and necessary". It conceded that the production requested by the employer may well be arguably relevant, but submits that the request is a "fishing expedition". It submits that the employer already has a fulsome medical file for each grievor, and that it does not need the additional documents in order to understand the union's position. It submits that the information already provided to the employer is enough, and asks what will the additional material do to enlighten the employer to make a determination, when the information already has is "explicit". It submits that I must balance all of the interests of the parties and determine if the balance tips toward a further intrusion into confidential medical information months after the employer had the opportunity to make its inquiry. It submits that this is not a case about disability.

22. In *Dufferin Concrete*, the arbitrator discussed the legitimate privacy interest in medical documentation, but notes that it may nonetheless be appropriate to order production, stating:

But even where the disclosure of medical information extends to details of an employee's alleged psychiatric or psychological illness, which might be highly intrusive but nevertheless may significantly impact the employee's ability to safely perform his or her work, Arbitrator Knopf noted at para. 20 in *West Park Hospital, supra*, that production of such medical information may be appropriate where the following conditions are satisfied:

First, the information requested must be arguably relevant. Second, the requested information must be particularized so there is no dispute as to what is desired. Third, the Board of Arbitration should be satisfied that the information is not being requested as a "fishing expedition". Fourth, there must be a clear nexus between the information being requested and the positions in dispute at the hearing. Further, the Board must be satisfied that disclosure will not cause undue prejudice....

23. In the grievances, the union asks that the grievors be "made whole, including but not limited to reimbursement of any and all sick leave entitlement the Member was denied". It asserts that the employer

breached the collective agreement and the grievors' "rights to be accommodated and not subject to discrimination on the basis of disability" . It seeks reimbursement on the basis that they were denied entitlements related to their absence from work for illness. The employer takes the position that the grievors were not entitled to STLDP leave and pay beyond when their benefits were discontinued as they were not totally disabled from work, and to the extent they may have required accommodation, the employer asserts it could have accommodated them. Despite the union's assertion that disability is not an issue in these grievances, all of this will necessitate a finding about whether the grievors were disabled and the extent of their disability. I find that the employer's request for medical documents of the grievors in relation to the disabilities which they assert rendered them totally disabled from work in the relevant period, are therefore arguably relevant.

24. The employer's request is not a request for "all medical files" and is confined to those which relate to the disabilities claimed in this matter. The employer has particularized the documents and classes of documents it seeks sufficiently well for the union to be able to ascertain what is sought, with the exception of the request for "the files of any benefits providers to whom the grievor applied or made a claim in relation to the disabilities at issue, and correspondence related thereto." At the hearing, when asked for clarification of this request, the employer did not state if it sought documentation relating, for example, to claims for insurance or extended benefits insurance, but rather repeated that it seeks documentation from "any benefit providers", with the reason being "just to be sure the medical disclosure is fulsome". I am not persuaded that this request is sufficiently particularized to enable the union to ascertain exactly what is being asked, and further, given its vagueness and apparent breadth, it may be considered to be more in the nature of a fishing expedition.
25. With the exception of the category noted above, I am not persuaded that the employer's request for documents is a fishing expedition. The documentation sought relates only to the disabilities claimed by the grievors in this matter. It arises clearly from the documentation they have already provided, and is appropriately understood as an attempt by the employer to establish the underpinnings of that documentation.

26. There is a clear nexus between the documents and the issues in dispute. The medical documents relating to the claimed disabilities are clearly linked to the grievors' claim of disability.
27. A determination regarding a request for production of medical documentation requires a balancing of interests. While the grievors have a legitimate privacy right in respect of their medical information, the question of whether they were totally disabled from work in the relevant periods must be answered. The medical documentation sought here may assist in answering that question, and has been determined above to be arguably relevant, and it is appropriate and necessary. The documentation sought is not overly-broad, and is confined to documentation which relates to the relevant disabilities.
28. In view of all of the above, with the exception of the request for "contents of the files of any benefits providers to whom the grievor applied or made a claim in relation to the disabilities at issue, and correspondence related thereto":

The union is to provide the above-noted requested documentation to the Employer counsel in a form and manner and within a time frame agreed to by the parties, and the grievors will provide the required written consents to release information to their relevant health professionals and in the case of Ms. Collias also to the WSIB.

29. I am seized.

"Maureen Doyle"

Maureen Doyle,

Sole Arbitrator