

Members Quarterly**Winter 2016 Edition****Feature**

Environmental Sensitivities in the Workplace

How far is far enough in an employer's effort to accommodate?

**Kyle MacIsaac**

In recent years, environmental sensitivities have increasingly become subject to accommodation requests and human rights complaints. Employers are required to adhere to ever increasing demands of employees seeking to have their environmental sensitivities accommodated in the workplace.

A Human Rights Tribunal recently considered whether an employer's efforts in accommodating an employee's environmental sensitivities were sufficient in the circumstances.

In *Andruski v Coquitlam School District and another*, 2015 BCHRT 74, the employee, a teacher, had suffered from a severe allergy to scents and dust. In her complaint, the employee alleged that the employer had failed to accommodate her physical disability by: a) not providing a scent-free work environment; b) not enforcing a scent-free work environment; and c) subjecting her to psychological harassment.

By August 2010, an accommodation plan agreed to by all parties was put in place. The employer took the following steps to accommodate the employee's environmental sensitivities:

1. Removed the carpet from the employee's classroom replacing it with linoleum;
2. Authorized the purchase of new computer equipment;
3. Replaced all of the soap dispensers in the school with unscented foam soap;
4. Advised the Vice-Principal on how to accommodate her disability;
5. Communicated with the union about resolving her scent issues as they arose; and
6. Communicated with staff and parents about being scent-free.

Any time the employee filed a report about various staff wearing scents, the employer took remedial action such as improving signage, speaking with scented staff members and reminding parents about sending students scent-free through monthly newsletters.

The Tribunal accepted, without any medical evidence (and "for the purpose of argument"), that *prima facie* discrimination is proven because the employee was in a protected group and had an adverse impact of not being able to work. Then, the Tribunal shifted the burden to the employer to justify their conduct, including that all reasonable and practical steps were taken to accommodate the employee's disability.

The Tribunal determined that the steps the employer took constituted sufficient accommodation efforts. The Tribunal noted the following: 1) the employee was obligated to cooperate with the employer in arriving at a reasonable accommodation; 2) the process of reaching an accommodation or working within it once agreed cannot itself constitute adverse impact; 3) the impact

Members Quarterly

Winter 2016 Edition

Feature

of the accommodation on others is a key consideration; and 4) the applicant has an obligation to accept reasonable accommodation.

Employers may see an increase in the coming years of employees seeking accommodation of their environmental sensitivities.

The above decision highlights the extent to which an employer may need to modify the workplace to accommodate environmental sensitivities of an employee. Of course, each workplace will be different and the extent to which an employer must modify working conditions will vary depending on the specific facts of each case. However, employers must be diligent in ensuring that they undertake a thorough analysis of the working conditions of their employee with environmental sensitivities and make those changes necessary to accommodate the employee, up to the point of undue hardship.

*Kyle MacIsaac is an Associate with McInnes Cooper in Halifax and can be reached at
kyle.macisaac@mcinnescooper.com*

