

# Uncomfortable, Not Unlawful: Emotional Discomfort In The Accommodation Process



A recent decision of the Human Rights Tribunal of Ontario (“Tribunal”) explores the boundaries of the duty to accommodate in the workplace. It raises important questions about how far employers must go to meet accommodation requests, and whether emotional discomfort during the process can establish a basis for a discrimination claim. This decision provides clarity on the procedural and substantive dimensions of the duty to accommodate, reinforcing that employers are not obligated to meet every preference or expectation.

## **Facts**

The applicant was employed by the Hamilton-Wentworth District School Board (the “School Board”), and she participated in an interview process for a permanent teaching position. As a result of a mental health disability, the employee provided documentation from a healthcare provider stating that the employee was “able to recognize many of the triggers that exacerbate her condition, and this should be heeded to avoid any emotional distress to her mental health.” The employee also requested accommodations for the interview process, such as a private space to relax before the interview, additional time to review interview questions, and the exclusion of a specific individual from the interview panel.

The School Board provided most of the requested accommodations, including removing the individual from the panel, offering a private space, and providing more preparation time than other candidates had received. The employee was ultimately successful in the interview process, and she was offered a permanent position. However, the employee alleged that the accommodations were deficient and caused her emotional distress. She cited less preparation time than she had expected (30 minutes instead of the expected 60 minutes), comments made to her that she found dismissive and anxiety-inducing, and the presence of individuals in the hallway (including the removed interviewer).

## **Legal Framework**

The Tribunal applied the established three-part test for *prima facie* discrimination:

1. the applicant must have a protected characteristic under the *Human Rights Code* (“Code”);
2. the applicant must have experienced adverse treatment; and

3. the protected characteristic must have been a factor in the adverse treatment.

While the employee's disability was undisputed, the Tribunal found that the second and third elements of the test were not met.

Although the employee argued that the process lacked sensitivity and dignity, the Tribunal found that the accommodations provided were reasonable and met the legal standard. The Tribunal clarified that the Code does not require employers to meet every subjective expectation. The Tribunal acknowledged that the accommodations were not exactly what the employee had expected; however, the Code only requires "reasonable" accommodation as opposed to "perfect" or "ideal" accommodation.

The Tribunal also noted that the employee's own physician had not specified any strict limitations or requirements beyond general recommendations to avoid emotional distress. The accommodations provided were consistent with the medical documentation and the employee's stated needs. Although the employee described negative feelings and feelings of anxiety during the accommodation process, the Tribunal found that those feelings did not amount to adverse treatment or substantive disadvantage sufficient to establish a *prima facie* case of discrimination.

## **Takeaways**

This decision serves as a reminder that the accommodation process must be respectful and responsive, but employers are not bound by the subjective preferences of the employee. This case makes clear that emotional discomfort may not be sufficient to establish discrimination under the Code, in the absence of any substantive adverse impact or disadvantage. It is a valuable precedent for understanding the limits and obligations of accommodation in the workplace.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

Authors: [Anthony Panacci](#), [Andrea Morin](#)

Fasken