

**COURT OF APPEAL FINDS EMPLOYER TOOK REASONABLE STEPS TO ACCOMMODATE RELIGIOUS OBLIGATIONS THROUGH SCHEDULING CHANGES**

*Ontario (Ministry of Community & Social Services) v. Grievance Settlement Board*  
[2000], O.J. No. 3411 (Ont. C.A.)

**Facts**

The grievor was a member of the Worldwide Church of God. His religion required him to observe 11 holy days during the calendar year. In 1995, the grievor sought permission to take 11 days off work with pay.

The employer had a religious observance policy that allowed two days off with pay reflecting the two Christian statutory holidays of Christmas and Good Friday. The policy allowed employees who required further accommodation to use scheduling changes to accommodate their religious needs. One scheduling alternative allowed employees to complete their hours of work in a compressed work week, thereby creating one additional day off every three weeks. Employees who required further accommodation beyond the compressed work week were permitted to use earned entitlements such as vacation credits and overtime, or unpaid leave, on which to observe their religious days. The employer also allowed employees to use their five mandated "social contract" days for religious observances.

The grievor rejected the alternatives presented to him by his employer. In particular, he banked 15 days through working compressed work weeks and argued that those days plus the five mandatory social contract days were his to do with as he saw fit. He took the position that the employer could not force him to use those days for religious observance purposes. The grievor filed a grievance alleging that he was discriminated against.

**Arbitration Decision (1997), 65 L.A.C. (4th) 345 (Gorsky)**

Arbitrator Gorsky found that the employer was entitled to require the grievor to use the five mandatory social contract days for religious observances, but could not require the grievor to use the days banked through the compressed work week. Arbitrator Gorsky found that the policy did not provide substantive equality. In particular, Arbitrator Gorsky categorized the 15 banked days that the grievor acquired through the compressed work week as earned benefits in the nature of vacation benefits. Accordingly, Arbitrator Gorsky concluded that the grievor could not be forced to use those 15 days for religious observances unless the employer could prove that it would suffer undue hardship by permitting him to take the required days off with pay.

**Divisional Court, an Unreported Decision Dated September 16, 1999**

The Divisional Court dismissed an application for judicial review, finding that the employer had failed to adduce any evidence that the accommodation of the grievor would cause undue hardship.

## **Ontario Court of Appeal**

The Court of Appeal allowed the appeal. The Court found that the compressed work week scheduling option was a valid accommodation measure. It allowed employees to schedule their hours of work to accommodate their religious observances without either losing wages or encroaching on pre-existing earned entitlements such as vacation. The Court found that Arbitrator Gorsky's classification of the days off created under the compressed work week as vacation benefits was patently unreasonable. The Court of Appeal concluded that employers can satisfy their duty to accommodate by providing scheduling changes, without first having to show that a leave of absence with pay would result in undue hardship.

The Court of Appeal found that the employer's policy had a discriminatory effect on the grievor only to the extent that the compressed work week provided one day off per three week period, and the grievor's holy days sometimes occurred on consecutive days. The Court found that the employer had met its duty to accommodate the grievor by permitting the grievor to bank those days and use them consecutively as required.