

**SUPREME COURT OF CANADA**

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| **Citation:** Quebec (Commission des normes, de l’équité, de la santé et de la sécurité du travail) *v*. Caron, 2018 SCC 3, [2018] 1 S.C.R. 35 | **Appeal Heard:** March 30, 2017  **Judgment Rendered:** February 1, 2018  **Docket:** 36605 |

Between:

Commission des normes, de l’équité, de la santé et de la sécurité du travail (formerly known as Commission de la santé et de la sécurité du travail)

Appellant

and

Alain Caron

Respondent

- and -

Attorney General of Quebec, Administrative Labour Tribunal (formerly known as Commission des lésions professionnelles), Miriam Home and Services, Conseil du patronat du Québec inc., Ontario Network of Injured Workers’ Groups, Industrial Accident Victims’ Group of Ontario, Centrale des syndicats du Québec and Canadian Union of Public Employees

Interveners

**Coram:** McLachlin C.J. and Abella, Karakatsanis, Wagner, Gascon, Côté and Rowe JJ.

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| **Reasons for Judgment:**  (paras. 1 to 58) | Abella J. (McLachlin C.J. and Karakatsanis, Wagner and Gascon JJ. concurring) |
| **Reasons Concurring in the Result:**  (paras. 59 to 115) | Rowe J. (Côté J. concurring) |

Quebec (Commission des normes, de l’équité, de la santé et de la sécurité du travail)*v.* Caron, 2018 SCC 3, [2018] 1 S.C.R. 35

Commission des normes, de l’équité, de la santé et de la sécurité

du travail (formerly known as Commission de la santé et

de la sécurité du travail) Appellant

v.

Alain Caron Respondent

and

Attorney General of Quebec,

Administrative Labour Tribunal (formerly known as

Commission des lésions professionnelles),

Miriam Home and Services,

Conseil du patronat du Québec inc.,

Ontario Network of Injured Workers’ Groups,

Industrial Accident Victims’ Group of Ontario,

Centrale des syndicats du Québec and

Canadian Union of Public Employees Interveners

**Indexed as: Quebec (Commission des normes, de l’équité, de la santé et de la sécurité du travail) *v*. Caron**

2018 SCC 3

File No.: 36605.

2017: March 30; 2018: February 1.

Present: McLachlin C.J. and Abella, Karakatsanis, Wagner, Gascon, Côté and Rowe JJ.

on appeal from the court of appeal for quebec

Workers’ compensation –– Human rights –– Disability rights –– Return to work –– Duty to accommodate –– Worker, victim of employment injury, requesting that *employer’s duty to reasonably accommodate* pursuant to Quebec *Charter of human rights and freedoms* be taken into account *in determining availability of suitable employment* –– Employer’s duty to reasonably accommodate worker with disability not expressly imposed by applicable legislative scheme –– *Whether employer’s duty to reasonably accommodate in accordance with Quebec Charter applies to workers* whose disability is caused by employment injury–– *Act respecting industrial accidents and occupational diseases, CQLR, c. A-3.001, ss. 236, 239* –– *Charter of human rights and freedoms, CQLR, c. C-12, ss. 10, 16.*

Legislation –– Interpretation –– Human rights –– “Charter values” interpretive principle –– Legislative scheme entitling workers whose disability is caused by employment injury to return to work with employer –– Employer’s duty to *reasonably* accommodate worker with disability not expressly imposed by applicable legislative scheme –– Whether legislative scheme should be interpreted to include *duty to reasonably accommodate* *in accordance with* Quebec *Charter* –– *Act respecting industrial accidents and occupational diseases, CQLR, c. A-3.001, ss. 236, 239* –– *Charter of human rights and freedoms, CQLR, c. C-12, ss. 10, 16.*

*Administrative law* –– Boards and tribunals –– *Commission des lésions professionnelles* ––Judicial review –– *Standard of review applicable to Commission’s decision refusing to apply employer’s duty to reasonably accommodate in accordance with Quebec Charter –– Act respecting industrial accidents and occupational diseases, CQLR, c. A‑3.001, ss. 236, 239 — Charter of human rights and freedoms, CQLR, c. C‑12, ss. 10, 16.*

In 2004, C suffered an employment injury that rendered him unable to resume his pre‑injury employment. He was subsequently informed that alternative suitable employment, as defined under the *Act respecting industrial accidents and occupational diseases*, was not available. At the time, the Commission de la santé et de la sécurité du travail (“CSST”) and, on appeal, the Commission des lésions professionnelles (“CLP”) were the administrative bodies charged with implementing the *Act*. The CSST informed C that given the unavailability of suitable employment with his employer, it would pursue the rehabilitation process and solutions elsewhere. C argued that thisdecision was premature and that his rehabilitation process with his employer should continue to ensure implementation of the protections against discrimination in the Quebec *Charter of human rights and freedoms* (“*Charter*”), including the employer’s duty to accommodate. On review, the CSST concluded that the duty to accommodate under the *Charter* does not apply to the *Act*. The CLP dismissed C’s appeal, finding that the statutory benefits in the legislation represent the full extent of an employer’s duty to accommodate and thatadditional accommodation measures could not be imposed on an employer. On judicial review, theSuperior Court set aside this decision and directed that the case be reconsidered in accordance with the employer’s duty to accommodate under the *Charter*. The Court of Appeal agreed and concluded that the legislation should be interpreted in accordance with the duty to accommodate under the *Charter*.

Held: The appeal should be dismissed.

*Per* McLachlin C.J. and Abella, Karakatsanis, Wagner and Gascon JJ.: Quebec’s injured worker legislation deals with workers who have become disabled as a result of injuries suffered at their workplace. It is legislation that seeks to prevent unfair treatment of injured workers based on their disability. It offers remedies for the economic,personal and physical consequences of the injuries, and seeks to ensure that the rights of workers are protected as fully as possible so that the disabilities do not result in workplace discrimination. The legislative scheme precludes an injured worker from instituting a civil liability action, which means that under the scheme, there is no other recourse for an injured worker, and no other forum in which to vindicate his or her rights. Any solution for an injured worker accordingly lies in the way the legislative scheme is interpreted and applied.

The issue in this appeal is whether the employer’s duty to reasonably accommodate someone with a disability, a core and transcendent human rights principle, applies to workers disabled at their workplace.The *Act* sets up a comprehensive scheme for the treatment of injured workers but does not *expressly* impose a duty to accommodate them. The duty to accommodate requires accommodation to the point that an employer is able to demonstrate that it could not have done anything else reasonable or practical to avoid the negative impact on the individual.

Like all Quebec legislation, the *Act* should be interpreted in conformity with the Quebec *Charter*. The duty to reasonably accommodate disabled employees is a fundamental tenet of Canadian and, more particularly, Quebec labour law. Since a core principle of the *Charter* is the duty to accommodate, it follows that this duty applies when interpreting and applying the provisions of Quebec’s injured worker legislation. There is no reason to deprive someone who becomes disabled as a result of an injury at work of principles available to all disabled persons, namely, the right to be reasonably accommodated. An injured worker’s rights and entitlements under the *Act* must therefore be interpreted and implemented in accordance with the employer’s duty to reasonablyaccommodate an employee disabled by a workplace injury. An examination of the *Act*’s goals and policies as well as the entitlements it sets out — such as reinstatement, equivalent, or suitable employment — reflect a statutory scheme that clearly anticipates that reasonable steps will be taken to assist the disabled worker in being able to work if possible. The duty to reasonably accommodate serves to inform how these entitlements are to be implemented on the facts of any particular case short of undue hardship.

Implementing this duty in light of the *Charter* does not disrupt the carefully calibrated duties and relationships that are set out in the *Act*. It merely requires a more robust approach to the implementation of the rights of disabled workers by the CSST and CLP and, by necessary implication, the employer. It ultimately means that the CSST and the CLP have the exclusive remedial authority to impose measures on the employer to do whatever is reasonably possible to accommodate the disabled worker’s individual injury.

Because the CSST and the CLP found that the concept of reasonable accommodation under the *Charter* did not apply, neither made any factual findings as to whether C was reasonably accommodated. In particular, the CLP did not make any findings about whether the employer would have had suitable employment if it had reasonably accommodated him. The decision of the CLP should be set aside and the matter remitted to the Administrative Labour Tribunal (the CLP’s institutional successor) for reconsideration taking into account the duty to reasonably accommodate.

*Per* Côté and Rowe JJ.: There is agreement with the majority to remit the matter for a determination of whether the employer has discharged its duty to accommodate in the circumstances, but disagreement in applying a blanket presumption of conformity of the *Act* with the *Charter* as this is contrary to the Court’s jurisprudence and to s. 51 of the *Charter.*

The “*Charter* values” interpretive principle does not allow the courts to generate in the name of *Charter* values an interpretation unsupported by the text of the statute. The *Act* and the *Charter* have different purposes. The *Act* is a compensatory, no‑fault scheme for employment injuries. The *Charter* has the wider goal of safeguarding fundamental rights, including the right to equality. This includes the duty to accommodate. Unlike the *Act*,the origin of the disability does not matter for the *Charter*; while it need not be a workplace accident, it includes disability arising from such an accident. The two legal schemes are distinct conceptually, which means that a worker’s *Charter* rights exist in addition to his or her statutory rights under the *Act*.

The duty to accommodate in situations such as the present one does not require an employer to create a new position from scratch for a disabled worker. This would not be a reasonable accommodation*.* Rather, it means that when an employer is looking at available positions, the employer is required to consider whether it has any suitable employment as defined by the *Act*, and also what its obligations under the *Charter* require with respect to flexibility in work standards. If what stands in the way of a position being suitable is a reasonable accommodation (to the point of undue hardship), then the employer is required by the *Charter* to take the steps needed to accommodate the disabled worker.

The decision under review in this case is that of the CLP stating that it could not grant C a remedy under the *Charter*. Given the importance of this question to the legal system, including the system of administrative justice, the applicable standard of review is correctness. The CLP’s statement to the effect that the *Act* constitutes the full extent of an employer’s duty to accommodate was accordingly incorrect in that the CLP had the authority and the duty to give effect to C’s *Charter* rights, as well as to his rights under the *Act.*

The Court has set out a two‑part inquiry to determine whether an administrative tribunal has jurisdiction to grant various remedies under s. 24(1) of the Canadian *Charter*. The first question is institutional: Does the tribunal have jurisdiction to grant *Charter* remedies? If a tribunal has the power to decide questions of law, the answer to this question is “yes”. The second question is specific to the remedy sought: Can the tribunal grant the remedy having regard to its statutory mandate? This question concerns legislative intent. While this framework was set out in the context of the Canadian *Charter*, there is no reason why the underlying rationale for the framework should not also apply to the Quebec *Charter*.

In carrying out its statutory mandate, the CLP had (and the Administrative Labour Tribunal now has) jurisdiction to grant remedies under the *Charter*, including the remedy sought in this case for an order requiring the employer to accommodate Cwhen determining whether it has suitable employment. Indeed, the CLP expressly had the power to decide questions of law and the type of remedy sought here fell within the powers granted to it. Therefore, the CLP erred in determining that its statutory grant of power did not give it authority to decide this matter.

**Cases Cited**

By Abella J.

**Applied:** *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Communauté urbaine de Montréal*, 2004 SCC 30, [2004] 1 S.C.R. 789; **referred to:** *Société des établissements de plein air du Québec v. Syndicat de la fonction publique du Québec*, 2009 QCCA 329; *Syndicat canadien des communications, de l’énergie et du papier, section locale 427 v. Tembec, usine de Matane*, 2012 QCCA 179; *Béliveau St‑Jacques v. Fédération des employées et employés de services publics inc*., [1996] 2 S.C.R. 345; *de Montigny v. Brossard (Succession)*,2010 SCC 51, [2010] 3 S.C.R. 64; *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; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*, 2000 SCC 27, [2000] 1 S.C.R. 665; *Commission scolaire régionale de Chambly v. Bergevin*, [1994] 2 S.C.R. 525; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3; *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868; *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650; *Moore v. British Columbia (Education)*, 2012 SCC 61, [2012] 3 S.C.R. 360; *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)*, [1990] 2 S.C.R. 489; *McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de l’Hôpital général de Montréal*, 2007 SCC 4, [2007] 1 S.C.R. 161; *Stewart v. Elk Valley Coal Corp*., 2017 SCC 30, [2017] 1 S.C.R. 591; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc*. *(Bombardier Aerospace Training Center)*, 2015 SCC 39, [2015] 2 S.C.R. 789; *R. v. Conway*, 2010 SCC 22, [2010] 1 S.C.R. 765; *Tranchemontagne v. Ontario (Director, Disability Support Program)*, 2006 SCC 14, [2006] 1 S.C.R. 513; *Gauthier v. Demers*, 2007 QCCA 1433, 65 Admin. L.R. (4th) 222; *Gougeon (Re)*, 1999 CanLII 21577.

By Rowe J.

**Applied:** *Quebec (Commission des droits de la personne et des droits de la jeunesse) v*. *Communauté urbaine de Montréal*, 2004 SCC 30, [2004] 1 S.C.R. 789; *R. v. Conway*, 2010 SCC 22, [2010] 1 S.C.R. 765; **referred to:** *Gauthier v. Demers*, 2007 QCCA 1433, 65 Admin. L.R. (4th) 222; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559; *R. v. Clarke*, 2014 SCC 28, [2014] 1 S.C.R 612; *Béliveau St‑Jacques v. Fédération des employées et employés de services publics inc.*,[1996] 2 S.C.R. 345; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Mouvement laïque québécois v. Saguenay (City)*,2015 SCC 16, [2015] 2 S.C.R. 3; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc*. *(Bombardier Aerospace Training Center)*, 2015 SCC 39, [2015] 2 S.C.R. 789; *Ontario Human Rights Commission v. Simpsons‑Sears Ltd.*,[1985] 2 S.C.R. 536; *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; *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712; *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, [2005] 1 S.C.R. 791; *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929; *R. v. 974649 Ontario Inc.*, 2001 SCC 81, [2001] 3 S.C.R. 575; *R. v. Oakes*, [1986] 1 S.C.R. 103; *Syndicat Northcrest v. Amselem*, 2004 SCC 47, [2004] 2 S.C.R. 551; *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11,[2013] 1 S.C.R. 467; *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54, [2017] 2 S.C.R. 386; *Association des cadres de la Société des casinos du Québec v. Société des casinos du Québec*, 2014 QCCA 603; *Université de Montréal v. Québec (Commission des droits de la personne et des droits de la jeunesse)*,2006 QCCA 508; *Moulin de préparation de bois en transit de St‑Romuald v. Commission d’appel en matière de lésions professionnelles*, [1998] C.A.L.P. 574; *Okwuobi v. Lester B. Pearson School Board*, 2005 SCC 16, [2005] 1 S.C.R. 257; *Université McGill v. McGill University Non Academic Certified Association (MUNACA)*, 2015 QCCA 1943; *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42, [2003] 2 S.C.R. 157.

**Statutes and Regulations Cited**

*Act respecting administrative justice*, CQLR, c. J‑3.

*Act respecting industrial accidents and occupational diseases*, CQLR, c. A‑3.001, ss. 1, 2 “benefit”, “employment injury”, “equivalent employment”, “suitable employment”, 4, 32, 48, 49 para. 1, 57(1), 145 et seq., 145, 166, 167, 170, 171, 172, 173 paras. 1 and 2, 174, 176, 181, 235(1), 236, 239, 240, 242 paras. 1 and 2, 244, 255, 281, 326, 349, 351 para. 1, 358, 359, 369 [rep. 2015, c. 15, s. 116], 377 [rep. *idem*], 378 [rep. *idem*], 438.

*Act to establish the Administrative Labour Tribunal*, CQLR, c. T‑15.1, ss. 1 para. 2, 6, 9, 10.

*Canadian Charter of Rights and Freedoms*, ss. 1, 2(*a*), 24(1).

*Charter of human rights and freedoms*, CQLR, c. C‑12, preamble, ss. 1 to 38, 1 to 9, 3, 9.1, 10, 16 to 20, 16, 49, 51, 52, 53.

**Authors Cited**

Brun, Henri, Guy Tremblay et Eugénie Brouillet. *Droit constitutionnel*, 6e éd. Cowansville, Que.: Yvon Blais, 2014.

Cormier, France. “La victime de harcèlement et le processus de réadaptation professionnelle”, dans Service de la formation continue du Barreau du Québec, vol. 263, *Développements récents en droit de la santé et sécurité au travail*. Cowansville, Que.: Yvon Blais, 2007, 113.

APPEAL from a judgment of the Quebec Court of Appeal (Hilton, Bélanger and Schrager JJ.A.), 2015 QCCA 1048, [2015] AZ‑51185251, [2015] J.Q. no5365 (QL), 2015 CarswellQue 5584 (WL Can.), affirming a decision of Dugré J., 2014 QCCS 2580, [2014] AZ‑51080015, [2014] J.Q. no5490 (QL), 2014 CarswellQue 5655 (WL Can.), allowing an application for judicial review of a decision of the Commission des lésions professionnelles and remitting the matter for reconsideration, 2012 QCCLP 3625, [2012] C.L.P. 173, [2012] AZ‑50863875, 2012 LNQCCLP 606 (QL). Appeal dismissed.

François Bilodeau and Lucille Giard, for the appellant.

Sophie Cloutier and Frédéric Tremblay, for the respondent.

Patrice Claude, Dana Pescarus and Abdou Thiaw, for the intervener the Attorney General of Quebec.

Marie‑France Bernier, for the intervener the Administrative Labour Tribunal (formerly known as Commission des lésions professionnelles).

Pierre Douville and Isabelle Auclair, for the intervener Miriam Home and Services.

Jean‑Claude Turcotte and Sébastien Parent, for the intervener Conseil du patronat du Québec inc.

Maryth Yachnin, Ivana Petricone and Rachel Weiner, for the interveners the Ontario Network of Injured Workers’ Groups and the Industrial Accident Victims’ Group of Ontario.

Claudine Morin, Nathalie Léger and Amy Nguyen, for the intervener Centrale des syndicats du Québec.

Josée Aubé, Céline Giguère and Julie Girard‑Lemay, for the intervener the Canadian Union of Public Employees.

The judgment of McLachlin C.J. and Abella, Karakatsanis, Wagner and Gascon JJ. was delivered by

1. Abella J. — The *Act Respecting Industrial Accidents and Occupational Diseases*[[1]](#footnote-1) governs the workplace injury compensation scheme in Quebec. It stipulates that a worker who becomes disabled as a result of an employment injury receives a number of benefits, including income replacement indemnities, assistance with rehabilitation, and, when certain conditions are met, the “right to return to work” with his or her employer.
2. An injured worker who is able to return tohis or heremployment within a certain period of time has the right to be reinstated to his or her pre-injury employment or an equivalent one.[[2]](#footnote-2) If the employment injury renders aworker unable to return to his or her pre-injury employment, there is a right to the first *suitable* employment that becomes available with the employer.[[3]](#footnote-3)
3. The issue in this appeal is whether the Commission de la santé et de la sécurité du travail (CSST) and the Commission des lésions professionnelles (CLP) must take into account the employer’s duty to reasonably accommodate an injured worker in determining if and how a return to work is possible under the scheme.
4. This case is in classic reasonableness territory — the CLP is interpreting the scope and application of its home statute. In my respectful view, however, its conclusion that employers do not have a duty of reasonable accommodation under the scheme, does not survive a reasonableness review.

Background

1. Alain Caron worked as a special educator at Centre Miriam, a center for persons with intellectual disabilities. On October 20, 2004, Mr. Caron hit his left elbow on a door frame in the course of his duties and developed lateral epicondylitis, or tennis elbow. This was recognized as an employment injury within the meaning of s. 2 of the *Act*, which states:

“**employment injury**” means an injury or a disease arising out of or in the course of an industrial accident, or an occupational disease, including a recurrence, relapse or aggravation;

1. The day after Mr. Caron’s injury, Centre Miriam gave him a temporary assignment as the team leader for the night shift. At the time, Centre Miriamwas responsible for transferring patients of the Rivière-des-Prairies Hospitalwith intellectual or developmental disabilities to locations tailored to their needs, such as specialized residences. Mr. Caron helped with the required paperwork as well as with training and support to new and existing personnel on the night shift.
2. Centre Miriam ended Mr. Caron’s temporary assignment when the process of transferring persons in its care was completed in 2007. It also decided that, given his disability, Mr. Caron could not return to his pre-injury position as an educator, and indicated that it had no suitable employment for Mr. Caron.
3. At the time, the CSST and, on appeal, the CLP were the administrative bodies charged with implementing the *Act*.[[4]](#footnote-4) The CSST has exclusive jurisdiction to examine and decide any question under the *Act*,[[5]](#footnote-5) including findings relating to the ability of workers to return to their pre-injury employment or suitable employment (*Société des établissements de plein air du Québec v. Syndicat de la fonction publique du Québec*, 2009 QCCA 329 (*SEPAQ*); *Syndicat canadien des communications, de l'énergie et du papier, section locale 427 v. Tembec, usine de Matane*, 2012 QCCA 179). It has authority to “render its decisions according to equity and upon the real merits and justice of the case”.[[6]](#footnote-6) Its decision is first reviewed internally[[7]](#footnote-7)and can then be challenged before the CLP,[[8]](#footnote-8) which has exclusive jurisdiction on appeal.[[9]](#footnote-9)
4. The CLP can make the decision or order that, in its opinion, should have been made.[[10]](#footnote-10) It can decide any question of law or fact necessary for the exercise of its jurisdiction,[[11]](#footnote-11) and can make any order it considers appropriate to safeguard the rights of the parties.[[12]](#footnote-12)
5. The CSST informed Mr. Caron that, given the fact that there was no suitable employment with Centre Miriam, it would pursue the rehabilitation process and solutions elsewhere. Mr. Caron argued that thisdecision was premature and that his rehabilitation process with Centre Miriam should continue in order to ensure implementation of the protections against discrimination in the Quebec *Charter of Human Rights and Freedoms*,[[13]](#footnote-13) including the employer’s duty to accommodate.
6. On review, the CSST concluded that the duty to accommodate under the Quebec *Charter* does not apply to the *Act*.
7. The CLP dismissed Mr. Caron’s appeal ([2012] C.L.P. 173). It concluded that the statutory benefits in the legislation represent the full extent of an employer’s duty to accommodate and thatadditional accommodation measures could not be imposed on an employer. It also concluded that Mr. Caron’s right to return to work had expired.
8. On judicial review, theQuebec Superior Court set aside the CLP’s decision and directed that the case be reconsidered in accordance with the employer’s duty to accommodate under the Quebec *Charter* (2014 QCCS 2580).
9. The Quebec Court of Appeal dismissed the appeal (2015 QCCA 1048). It agreed that the legislation should be interpreted and applied in accordance with the provisions of the Quebec *Charter*, including the employer’s duty to accommodate. It concluded that this duty under the Quebec *Charter* should be integrated into the legislation. I agree.

Analysis

1. Quebec’s injured worker legislation “expresses a well thought‑out social compromise between various contradictory forces” (*Béliveau St-Jacques v. Fédération des employées et employés de services publics inc*., [1996] 2 S.C.R. 345, at para. 114).
2. The development and purpose of the scheme were described in *Béliveau* as being to “remov[e] work accidents from the purview of civil liability” (para. 109). The statutory compromise reached in the original legislation in 1909 was that in exchange for avoiding the “uncertainties of civil proceedings” (para. 109) and having to prove an employer’s fault, injured workers were entitled to fault-free, partial and fixed-sum compensation. In exchange, in other words, for workers giving up the possibility of full compensation, employers had to provide partial compensation when an accident occurred. The costs were divided between workers and employers (see *de Montigny v. Brossard (Succession)*, [2010] 3 S.C.R. 64, at para. 42).
3. When legislative reforms were introduced in 1985, the compensation system was revised but the underlying principles were not. Moreover, under s. 349, any matters contemplated by the scheme were conferred exclusively on the CSST.
4. Section 438 is the provision that makes the *Act* an exclusive scheme:

**438.** No worker who has suffered an employment injury may institute a civil liability action against his employer by reason of his employment injury.

That means that under the scheme,[[14]](#footnote-14) there is no other recourse for an injured worker, and no other forum in which to vindicate his or her rights (*SEPAQ*; *Tembec*). Any solution, therefore, lies in the way the legislative scheme is interpreted and applied.

1. Like similar legislation across Canada, Quebec’s injured worker legislation deals with workers who have become disabled as a result of injuries suffered at their workplace. It is, in effect, legislation that seeks to prevent unfair treatment of injured workers based on their disability. It offers remedies for the economic,personal and physical consequences of the injuries, and seeks to ensure that the rights of workers are protected as fully as possible so that the disabilities do not result in workplace discrimination. The Quebec legislation expressly acknowledges this in s. 32, which states:

**32.** No employer may dismiss, suspend or transfer a worker or practice discrimination or take reprisals against him, or impose any other sanction upon him because he has suffered an employment injury or exercised his rights under this Act.

1. The issue in this appeal is whether the employer’s duty to reasonably accommodate someone with a disability, a core and transcendent human rights principle, applies to workers disabled at their workplace.The *Act* sets up a comprehensive scheme for the treatment of injured workers but does not *expressly* impose a duty to accommodate them.
2. The Quebec *Charter* imposes a duty to accommodate in ss. 10 and 16:

**10.** Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

**16.** No one may practise discrimination in respect of the hiring, apprenticeship, duration of the probationary period, vocational training, promotion, transfer, displacement, laying-off, suspension, dismissal or conditions of employment of a person or in the establishment of categories or classes of employment.

The issue is whether the legislative scheme should be interpreted to include a duty to accommodate in line with the approach taken pursuant to these provisions of the Quebec *Charter*.

1. The duty to reasonably accommodate disabled employees is a fundamental tenet of Canadian and, more particularly, Quebec labour law. The goal of the duty to accommodate in the employment context was summarized by Deschamps J. as being “to ensure that an employee who is able to work can do so. . . . The purpose of the duty to accommodate is to ensure that persons who are otherwise fit to work are not unfairly excluded where working conditions can be adjusted without undue hardship” (*Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d’Hydro-Québec, section locale 2000 (SCFP-FTQ)*, [2008] 2 S.C.R. 561,atpara. 14; see also *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*, [2000] 1 S.C.R. 665, at para. 36; *Commission scolaire régionale de Chambly v. Bergevin*, [1994] 2 S.C.R. 525, at p. 544). The duty reflects a choice by legislatures to ensure “that the standards governing the performance of work should be designed to reflect all members of society, in so far as this is reasonably possible” (*British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 (*Meiorin*), at para. 68).
2. In *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 (*Grismer*), McLachlin J. explained that

[e]mployers and others governed by human rights legislation are now required in all cases to accommodate the characteristics of affected groups within their standards, rather than maintaining discriminatory standards supplemented by accommodation for those who cannot meet them. Incorporating accommodation into the standard itself ensures that each person is assessed according to her or his own personal abilities, instead of being judged against presumed group characteristics. [Emphasis in original; para. 19.]

1. As McLachlin J. explained in *Meoirin*, “there may be different ways to perform the job while still accomplishing the employer’s legitimate work-related purpose . . . . The skills, capabilities and potential contributions of the individual claimant and others like him or her must be respected as much as possible” (para. 64).
2. The duty to accommodate is not unlimited; its scope in any particular case is defined by the symmetrical concepts of “reasonable accommodation” and “undue hardship”. In *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, [2007] 1 S.C.R. 650, this Court observed that “[u]ndue hardship implies that there may necessarily be some hardship in accommodating someone’s disability, but unless that hardship imposes an undue or unreasonable burden, it yields to the need to accommodate” (para. 122), explaining:

The jurisprudence of this Court reveals that undue hardship can be established where a standard or barrier is “reasonably necessary” insofar as there is a “sufficient risk” that a legitimate objective like safety would be threatened enough to warrant the maintenance of the . . . standard . . .; where “such steps as may be reasonable to accommodate without undue interference in the operation of the employer’s business and without undue expense to the employer” have been taken . . .; where no reasonable alternatives are available . . .; where only “reasonable limits” are imposed on the exercise of a right . . .; where an employer or service provider shows “that it could not have done anything else reasonable or practical to avoid the negative impact on the individual” . . . . The point of undue hardship is reached when reasonable means of accommodation are exhausted and only unreasonable or impracticable options for accommodation remain. [Citations omitted; para. 130.]

1. As Deschamps J. explained in *Hydro-Québec*,

[w]hat 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 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. [paras. 12 and 16]

1. In short, the duty to accommodate requires accommodation to the point that an employer is able to demonstrate “that it could not have done anything else reasonable or practical to avoid the negative impact on the individual” (*Moore v. British Columbia (Education)*, [2012] 3 S.C.R. 360, at para. 49, quoting *Meiorin*, at para. 38; *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)*, [1990] 2 S.C.R. 489, at pp. 518-19; *VIA Rail*, at para. 130). The relevant considerations depend “on the factors relevant to the circumstances and legislation governing each case” (*Via Rail*, at para. 123; *Central Alberta Dairy Pool*, at pp. 520-21).
2. Deschamps J. in *McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de l’Hôpital général de Montréal*, [2007] 1 S.C.R. 161, stressed that what is involved is an individualized assessment process:

The importance of the individualized nature of the accommodation process cannot be minimized. The scope of the duty to accommodate varies according to the characteristics of each enterprise, the specific needs of each employee, and the specific circumstances in which the decision is to be made. [para. 22]

(See also *VIA Rail*, at para. 123.)

1. Most recently, Gascon J. in his reasons in *Stewart v. Elk Valley Coal Corp*., [2017] 1 S.C.R. 591,dissenting but not on this point, summarized the operative principles: an employer is not required to establish that it is “impossible . . . to accommodate”, only that nothing else reasonable or practical could be offered; an individualized analysis is required; the duty to accommodate includes both procedural and substantive duties; and the undue hardship threshold means an employer will always bear some sort of hardship (paras. 125-28).
2. A duty to accommodate has been found under all of Canada’s human rights statutes prohibiting discrimination, including under the Quebec *Charter* (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc*. *(Bombardier Aerospace Training Center)*, [2015] 2 S.C.R. 789).
3. This brings us to the heart of this appeal, namely whether the legislative scheme should be interpreted and implemented by taking into account the duty imposed on employers to reasonably accommodate, in light of ss. 10 and 16 of the Quebec *Charter*.
4. The tools to address the issues in this case are found in this Court’s decision in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Communauté urbaine de Montréal*, [2004] 1 S.C.R. 789, where LeBel J. confirmed that Quebec legislation must be interpreted in accordance with the principles of the Quebec *Charter*:

In Quebec law, in matters within the jurisdiction of the National Assembly, *the Quebec Charter has been elevated to the rank of a source of fundamental law. The interpretation of legislation must draw on its principles.* The preliminary provision of the *Civil Code of Québec*, S.Q. 1991, c. 64, states that the *Code*, as the *jus commune* of Quebec, must be interpreted in harmony with the Quebec *Charter*. [Emphasis added; para. 20.]

It is an approach that has generally been followed in the Quebec jurisprudence. It endorses the view that *all* Quebec law should be interpreted in conformity with the Quebec *Charter*. It is, as a result, unnecessary to deal with Mr. Caron’s argument, raised for the first time in this Court, that *R. v. Conway*, [2010] 1 S.C.R. 765, should be applied.

1. This approach has also been applied outside Quebec, as this Court noted in *Via Rail*:

. . . human rights legislation, as a declaration of “public policy regarding matters of general concern”, forms part of the body of relevant law necessary to assist a tribunal in interpreting its enabling legislation. [para. 114]

(See also *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513.)

1. It was applied to the injured worker legislation by the Quebec Court of Appeal in *Gauthier v. Demers* (2007), 65 Admin. L.R. (4th) 222. The issue in that case was the meaning of “another good and sufficient reason” under s. 255 of the *Act*, which states that to rebut the presumption that an action was taken against the worker because of an employment injury or the exercise of a right under the *Act*, in breach of s. 32 of the *Act*,the employer must prove that the action was taken for “another good and sufficient reason”. Vézina J.A. emphasized the quasi-constitutional nature of the Quebec *Charter* and its interaction with other laws:

[translation] In a way, the provisions of the *Charter* that protect fundamental rights form an integral part of every statute without the statute itself having to say so.

More specifically, the provision of the [*Act Respecting Occupational Health and Safety*, CQLR, c. S-2.1] that refers to a “good and sufficient reason” must be interpreted as if it included the words “that is consistent with the *Charter*”. This is the principle of supremacy of the *Charter*, a quasi-constitutional Act. [paras. 51-52]

1. Since a core principle of the Quebec *Charter* is the duty to accommodate, it follows that this duty applies when interpreting and applying the provisions of Quebec’s injured worker legislation. There is no reason to deprive someone who becomes disabled as a result of an injury *at work*, of principles available to all disabled persons, namely, the right to be reasonably accommodated.
2. Implementing this duty in light of the Quebec *Charter* does not disrupt the carefully calibrated duties and relationships that are set out in the *Act*. It merely requires a more robust approach to the implementation of the rights of disabled workers by the CSST and CLP and, by necessary implication, the employer.
3. Interpreting and implementing the *Act* in a given case in accordance with the principle of reasonable accommodationis, in fact, consistent with the scheme’s efforts to enable the worker to return to work. If we examine the *Act*’s goals and underlying policies, we see a statutory scheme that already clearly anticipates that reasonable steps will be taken to assist the disabled worker in being able to work if possible.
4. The *Act* entitles an injured worker to reinstatement in his or her former job, to reassignment to “equivalent employment”, or to hold “suitable employment”, as set out in ss. 236 and 239:

**236.** A worker who has suffered an employment injury and again becomes able to carry on his employment is entitled to be reinstated by preference to others in his employment in the establishment where he was working when the employment injury appeared or reassigned to equivalent employment in that establishment or in another establishment of his employer.

**239.** A worker who remains unable to carry on his employment as a result of an employment injury and who becomes able to carry on suitable employment is entitled to hold the first suitable employment that becomes available in an establishment of his employer.

The right conferred by the first paragraph is exercised subject to the rules respecting seniority prescribed by the collective agreement applicable to the worker.

1. Workers who become able to carry on the employment they held at the time of their injury, are entitled to be reinstated in their pre-injury jobs or to be reassigned to “equivalent employment” with the employer.
2. “Equivalent employment” is defined in s. 2 as an “employment of a similar nature to the employment held by the worker when he suffered the employment injury, from the standpoint of vocational qualifications required, wages, social benefits, duration and working conditions”. This arises in circumstances where a worker is technically able to do his pre-injury employment but cannot return to it for reasons unrelated to the injury, such as the elimination of the position (France Cormier, “La victime de harcèlement et le processus de réadaptation professionnelle”, in Barreau du Québec, vol. 263, *Développements récents en droit de la santé et sécurité au travail* (2007), 113; *Gougeon (Re)*, 1999 CanLII 21577 (Que. C.L.P.)).
3. As a result, workers who recover sufficiently that they can returnto their pre-injury employment within the stipulated time, return either to that job or to an equivalent one, with the same salary and benefits they would have had if they had continued to work.[[15]](#footnote-15) Workers who are able to carry on their pre-injury employment *after* their right to return to work has expired, will have access to assistance in finding employment elsewhere[[16]](#footnote-16) and to income replacement benefits for a maximum period of one year.[[17]](#footnote-17)
4. And under s. 239 of the *Act*, a worker who becomes able to carry on “suitable employment”, is entitled to the first suitable employment in the workplace. “[S]uitable employment” is defined in s. 2as an “appropriate employment that allows a worker who has suffered an employment injury to use his remaining ability to work and his vocational qualifications, that he has a reasonable chance of obtaining and the working conditions of which do not endanger the health, safety or physical well-being of the worker, considering his injury”.
5. Workers who obtain “suitable employment” with the employer receive the salaries and benefits related to this work, based on their seniority and accumulated service.[[18]](#footnote-18) A reduced income replacement indemnity helps compensate for any loss in salary between the pre-injury employment and the “suitable employment”.[[19]](#footnote-19)
6. If the employer has no “suitable employment” available, the worker can have his or her vocational potential evaluated to help determine what employment would be suitable elsewhere, get access to vocational training programs, and receive assistance in finding employment.[[20]](#footnote-20)
7. Each of these entitlements — reinstatement, equivalent, or suitable employment — is reflective of ensuring “that an employee who is able to work can do so” (*Hydro-Québec*, at para. 14). And this, in turn, is consistent with the employer’s duty to reasonably accommodate, a duty which informs how these entitlements are to be implemented on the facts of any particular case.
8. The *Act*’sprovisions dealing with rehabilitation also reflect the duty to accommodate. A worker who suffers permanent impairment due to his employment injury is entitled to rehabilitation measures with a view to his social and professional reintegration.[[21]](#footnote-21) The worker will receive a personal rehabilitation plan, prepared and implemented by the CSST with the worker’s cooperation.[[22]](#footnote-22) This plan may include a physical, social and professional rehabilitation program.
9. The purpose of the professional rehabilitation program is to facilitate the worker’s reinstatement in his or her employment or an equivalent employment or, where that objective is not feasible, to facilitate his or her access to suitable employment.[[23]](#footnote-23) The *Act* defines a professional rehabilitation program broadly. It may include measures like a refresher program, an evaluation of vocational potential, a vocational training program, assistance in finding employment, the payment of subsidies to an employer to favour the employment of workers who have sustained permanent physical or mental impairments, the payment of any cost incurred to explore the employment market or to move near a new place of employment, the payment of subsidies to the worker, and, notably, the adaptation of a position.[[24]](#footnote-24)
10. The cost of rehabilitation is assumed by the CSST.[[25]](#footnote-25) It in turn collects the money it needs for the administration of the *Act* from employers.[[26]](#footnote-26) It also attributes to the employer the cost of benefits payable by reason of an industrial accident suffered by a worker while in the employ of the employer.[[27]](#footnote-27)
11. The CSST may also, under s. 176,[[28]](#footnote-28) reimburse the cost of adapting a position, if the adaptation enables a worker who has sustained permanent physical impairment as a result of his or heremployment injury, to carry on his or heremployment, “equivalent employment” or “suitable employment”, including expenses incurred for purchasing and installing the required materials and equipment. This provision anticipates that there may be compensable changes to a workplace which has been adapted to allow a worker to return to any pre-injury,equivalent or suitable employment. This too shows that the scheme clearly envisions some form of accommodation for the worker.
12. As this review shows, the objectives ofQuebec’s injured worker scheme overlap with those of theQuebec *Charter*. The injured worker scheme seeks “to facilitate the worker’s reinstatement in his employment or an equivalent employment or, where that object is not attainable, to facilitate his access to suitable employment”.[[29]](#footnote-29) Similarly, Quebec’s *Charter* seeks “to ensure that persons who are otherwise fit to work are not unfairly excluded where working conditions can be adjusted without undue hardship” (*Hydro-Québec*,at para. 14). This is the essence of the duty of reasonable accommodation. The injured worker scheme sets out various types of accommodation, such as reinstatement, equivalent employment, or failing that, the most suitable employment possible. The fact that the scheme sets out *some* type of accommodation does not negate the broader, general accommodation required by the Quebec *Charter*.
13. An injured worker’s rights and entitlements under the *Act* must therefore be interpreted and implemented in accordance with the employer’s duty to reasonablyaccommodate an employee disabled by a workplace injury, which in turn means that the CSST and the CLP have the exclusive remedial authority, in implementing ss. 236 and 239 of the *Act* dealing with reinstatement, equivalent, or suitable employment, to impose measures on the employer to do whatever is reasonably possible to accommodate the disabled worker’s individual injury and the circumstances that flow from it.
14. How then does this apply in the circumstances of this case?
15. Mr. Caron is relying on his right to return to suitable employment under s. 239 of the *Act*.Interpreting the provision in accordance with Quebec *Charter* principles and the objectives of the *Act* means that the employer has a duty to reasonably accommodate Mr. Caron in determining whether suitable employment is available under s. 239.
16. Mr. Caron identified two “suitable” jobs at Centre Miriam which he claimed he could perform if he was reasonably accommodated: (1) his pre-injury employment position as an educator, provided that certain modifications were made to accommodate his functional disability, and (2) the team leader position he held during his temporary assignment with Centre Miriam.
17. Because the CSST and the CLP found that the concept of reasonable accommodation under the Quebec *Charter* did not apply, neither made any factual findings as to whether Mr. Caron was reasonably accommodated. In particular, the CLP did not make any findings about whether the employer would have had “suitable employment” if it had reasonably accommodated him. It may be that if the employer had considered its duty to accommodate in its search for suitable employment, it would have found other suitable positions for Mr. Caron to occupy.
18. Given the direction in these reasons that the statutory scheme is to be interpreted and applied in accordance with the employer’s duty to reasonably accommodate under the Quebec *Charter*, it seems to me that Mr. Caron should be given the opportunity to attempt to vindicate his rights as an injured worker in accordance with the revised approach. I appreciate that these proceedings have been protracted, perhaps even unduly, but important legal principles had yet to be resolved.
19. As a result, like the Court of Appeal, I would set aside the decision of the CLP and remit the matter to the Administrative Labour Tribunal (the CLP’s institutional successor) so that the claim of Mr. Caron can be decided taking into account the employer’s duty to reasonably accommodate in accordance with the Quebec *Charter*. Section 240[[30]](#footnote-30) of the *Act* stipulates that the entitlements in the scheme are time limited. Whether the time limit should be applied to Mr. Caron is a determination for the Administrative Labour Tribunal to make in the context of this revised approach and the relevant circumstances of this case.
20. I would dismiss the appeal with costs.

The reasons of Côté and Rowe JJ. were delivered by

Rowe J. —

1. Introduction
2. I have had the benefit of reading the reasons of Justice Abella and I agree with her in the result, to remit the matter to the Administrative Labour Tribunal (“ALT”), formerly known as the Commission des lésions professionnelles(“CLP”),for a determination of whether the employer has discharged its duty to accommodate.
3. Where Justice Abella and I differ is in the approach to attain this result. My colleague takes an approach in which she interprets the legislative scheme “to include a duty to accommodate” (reasons of Abella J., at para. 21) in accordance with the view that “*all* Quebec law should be interpreted in conformity with the Quebec *Charter*” (reasons of Abella J., at para. 32 (emphasis in original)). In my view, this goes beyond the approach to statutory interpretation set out by this Court whereby “[t]he interpretation of legislation must draw on [the] principles [of the Quebec *Charter*]” (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v*. *Communauté urbaine de Montréal*,2004 SCC 30, [2004] 1 S.C.R. 789, at para. 20 (emphasis added)). It also goes beyond what the Quebec Court of Appeal did in *Gauthier v. Demers*,2007 QCCA 1433, 65 Admin L.R. (4th) 222, where the Quebec *Charter of human rights and freedoms*,CQLR, c. C-12 (“Quebec *Charter*”),was used to conclude that a discriminatory reason could not be “good and sufficient” within the meaning of the *Act respecting industrial accidents and occupational diseases*, CQLR, c. A-3.001 (“Act”). In effect, my colleague shoehorns the duty to accommodate into an Act that was not created for that purpose and extends the scope of a provision of law. This is contrary to this Court’s jurisprudence and to s. 51 of the Quebec *Charter.*
4. As this Court explained in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, the “*Charter* values” interpretive principle serves a narrow purpose: when faced with two interpretations — one compliant with the *Canadian Charter of Rights and Freedoms* (“Canadian *Charter*”), the other infringing it — courts can apply the presumption of compliance with the Canadian *Charter* to read the statute in a manner respectful of the *Charter* value in question. This allows the statute to remain in force — untouched — and interpreted such that it complies with the Canadian *Charter*. This principle, however, does not allow the courts to generate in the name of *Charter* values an interpretation unsupported by the text of the statute (*Bell ExpressVu*,at para. 62; *R. v. Clarke*,2014 SCC 28, [2014] 1 S.C.R. 612, at para. 12).
5. Given the nature of the Quebec *Charter* as a quasi-constitutional instrument and its similarities with the Canadian *Charter* with respect to derogation, interpretation, and justification, the interpretative role of the courts should operate in a similar way for both instruments. A blanket presumption of conformity with the Quebec *Charter* could “frustrate true legislative intent, contrary to what is mandated by the preferred approach to statutory construction” *(Bell ExpressVu*,at para. 64) just as such a blanket presumption could for the Canadian *Charter*.
6. Further, while pursuant to s. 53, the Quebec *Charter* can be used “[i]f any doubt arises in the interpretation of a provision” of an Act, s. 51 of the Quebec *Charter* “makes a point of stating that the [Quebec] *Charter* must not, as a general rule, be interpreted so as to extend or amend the scope of a provision of law” (*Béliveau St-Jacques v. Fédération des employées et employés de services publics inc.*,[1996] 2 S.C.R. 345, at para. 131). With respect, my colleague’s approach conflicts with these rules.
7. The analytical path I propose is similar to that taken by the courts below. It is based on the jurisdiction of the CLP and the ALT as administrative tribunals with the power to decide questions of law and to make orders appropriate to vindicate the rights of the parties. This approach maintains the distinct character of the two regimes and corresponds to the Quebec *Charter* remedies Mr. Caron sought before the CLP.
8. Facts
9. On October 20, 2004, the respondent, Mr. Alain Caron, developed epicondylitis (often referred to as “tennis elbow”) while carrying out his duties as a special educator at Centre Miriam, a center for persons with intellectual disabilities. He was temporarily re-assigned, the following day, as team leader of the night shift. This re-assignment was possible due to the needs of Centre Miriam at the time; it was receiving a number of patient transfers from another hospital.
10. On October 6, 2006, the Commission de la santé et de la sécurité du travail (“CSST”) decided that the employment injury had consolidated, leaving permanent impairment and functional limitations. On October 5, 2007, Centre Miriam ended Mr. Caron’s temporary re-assignment because the patient transfer process had been completed. The CSST decided at that point that Mr. Caron could return to his original employment. This decision was contested by Centre Miriam; it was reversed by the CLP in 2009.
11. On April 16, 2010, Centre Miriam informed the CSST that it did not have suitable employment for Mr. Caron. This was challenged by Mr. Caron’s union on the grounds that Centre Miriam should have taken into account its duty to accommodate pursuant to the Quebec *Charter* in determining whether there was suitable employment. In the union’s view, there were two positions that would have been available for Mr. Caron, had it done so. The CSST sided with Centre Miriam, on the basis that the Actis a complete accommodation scheme for employment injuries. In the CSST’s view, it follows that there is no need to look to the Quebec *Charter* to supplement what is provided for under the Act. Centre Miriam terminated Mr. Caron’s employment shortly thereafter.
12. Mr. Caron contested the CSST’s decision before the CLP. It is this decision that is the subject of judicial review.
13. Judicial History
    1. Commission des lésions professionnelles, 2012 QCCLP 3625, [2012] C.L.P. 173
14. In its decision, the CLP recognized that it has the power to decide any question of law necessary to the exercise of its jurisdiction and that this carried with it the authority and the duty to apply the Quebec *Charter*.
15. However, the CLP took the view that it was bound by the jurisprudence of the Quebec Court of Appeal and by its own decisions to the effect that measures provided for under the Act exhaust the duty to accommodate. Accordingly, the employer was not required to accommodate Mr. Caron beyond what the Act provided. The CLP also decided that Mr. Caron’s right to work under the Act had expired. The CLP therefore granted Mr. Caron no remedy; it dismissed his appeal.
    1. Quebec Superior Court, 2014 QCCS 2580
16. Mr. Caron sought judicial review before the Superior Court. Dugré J. held that the applicable standard of review was reasonableness. In his view, the question was not one of jurisdiction, but rather whether the CLP made a decision that reasonably balanced Quebec *Charter* values and the Act.
17. He found the CLP’s decision to be unreasonable. In his view, the CLP confused the question of whether the employer fulfilled its duties under the Quebec *Charter*,and the question of whether the Actcomplies with the Quebec *Charter*. According to Dugré J., if the absence of suitable employment results from a violation of a right protected by the Quebec *Charter* — i.e. if the claimant has been discriminated against by reason of his disability resulting from an employment injury — the CLP has the duty to grant a remedy under s. 49 of the Quebec *Charter*.
18. Likewise, according to Dugré J., the CLP’s decision that Mr. Caron’s right to return to work had expired was unreasonable. Having decided that it could not rule on whether Mr. Caron had been the victim of discrimination on the basis of his disability, the CLP did not make the proper inquiry regarding whether s. 240 of the Act (which provides that the right to return to work expires two years after the period of continuous absence of the worker as a result of an employment injury) is rendered inoperative due to a conflict with the Quebec *Charter*. Accordingly, Dugré J. held that the CLP should rehear the matter to decide, first, whether Mr. Caron was a victim of discrimination and, second, whether s. 240 of the Actis rendered inoperative by s. 52 of the Quebec *Charter*. Dugré J. returned the matter to the CLP to determine whether the employer had discharged its duty to accommodate as required by the Quebec *Charter*.
    1. Quebec Court of Appeal, 2015 QCCA 1048
19. Bélanger J.A., with the concurrence of Hilton and Schrager JJ.A., came to a similar conclusion. The Court of Appeal did so applying the correctness standard, on the basis that applying the Quebec *Charter* is a question of law that is of central importance to the legal system and outside the specialized area of expertise of the administrative decision maker (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 60).
20. The Court of Appeal held that the CLP had the authority to require an employer to accommodate a disabled employee with respect to suitable employment, as per the Quebec *Charter*. While the duty to accommodateunder the Quebec *Charter* and relief under the Actevolved in parallel, this does not prevent the CLP from drawing on the Quebec *Charter* in exercising its authority conferred by the Act. Its power to decide questions of law authorizes it to grant the remedy sought by Mr. Caron. The duty to accommodate stemming from the Quebec *Charter* and the Actmay well overlap.
21. Regarding the expiry of the right to return to work pursuant to s. 240 of the Act, the Court of Appeal held that the duty to accommodate was incompatible with a mechanical application of a clause which provides for the termination of the employment relationship after a set period of time. The duty to accommodate calls for an individualized assessment making the two-year limit, at most, a factor to be considered, rather than being determinative. The CLP must first decide whether Mr. Caron suffered discrimination based on his disability. Once the circumstances of the case have been examined, then the CLP will be able to make a determination on the two-year limit under s. 240. The appeal against Dugré J.’s decision was dismissed and his order returning the matter to the CLP was affirmed.
22. Relevant Provisions
23. The relevant provisions of theQuebec *Charter* and Act are as follows:

*Charter of human rights and freedoms*,CQLR, c. C-12

**10.** Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right

**16.** No one may practise discrimination in respect of the hiring, apprenticeship, duration of the probationary period, vocational training, promotion, transfer, displacement, laying-off, suspension, dismissal or conditions of employment of a person or in the establishment of categories or classes of employment.

**49.** Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.

In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.

**52.** No provision of any Act, even subsequent to the Charter, may derogate from sections 1 to 38, except so far as provided by those sections, unless such Act expressly states that it applies despite the Charter.

*Act respecting industrial accidents and occupational diseases*, CQLR, c. A-3.001

**1.** The object of this Act is to provide compensation for employment injuries and the consequences they entail for beneficiaries.

The process of compensation for employment injuries includes provision of the necessary care for the consolidation of an injury, the physical, social and vocational rehabilitation of a worker who has suffered an injury, the payment of income replacement indemnities, compensation for bodily injury and, as the case may be, death benefits.

This Act, within the limits laid down in Chapter VII, also entitles a worker who has suffered an employment injury to return to work.

**349.** The Commission has exclusive jurisdiction to examine and decide any question contemplated in this Act unless a special provision gives the jurisdiction to another person or agency

**377.** The board has the power to decide any question of law or fact necessary for the exercise of its jurisdiction.

It may confirm, quash or amend a contested decision or order and, if appropriate, make the decision or order that should, in its opinion, have been made initially. [Now repealed. See the *Act to establish the Administrative Labour Tribunal*, CQLR, c. T-15.1, at s. 9.]

**378.** The board and its commissioners are vested with the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment.

They are also vested with all the powers necessary for the performance of their duties; they may, in particular, make any order they consider appropriate to safeguard the rights of the parties.

No judicial proceedings may be brought against them by reason of an act done in good faith in the performance of their duties. [Now repealed. See the *Act to establish the Administrative Labour Tribunal*, at ss. 9 and 10.]

1. Analysis
   1. Standard of Review
2. This Court has held that deference is owed to a tribunal making a determination within its specialized jurisdiction even when drawing on the Quebec *Charter*:

Deference is in order where the Tribunal acts within its specialized area of expertise, interprets the *Quebec Charter* and applies that charter’s provisions to the facts to determine whether a complainant has been discriminated against . . . .

(*Mouvement laïque québécois v. Saguenay (City)*,2015 SCC 16, [2015] 2 S.C.R. 3, at para. 46)

1. The CLP declined jurisdiction on the basis that the Actwas exhaustive of an employer’s duty to accommodate and that it could not grant any remedies in addition to those provided for in the Act(CLP decision, at para. 87). One could view this as a specialized tribunal interpreting its home statute; in such an instance the deferential standard of reasonableness would apply (*Dunsmuir*,at para. 54).
2. By contrast, in deciding that it could not grant a remedy under the Quebec *Charter*, one could characterize the CLP’s decision as one relating to the scope of its statutory grant of power, i.e. its jurisdiction. Under that characterization, the decision would be reviewed on the standard of correctness:

Administrative bodies must also be correct in their determinations of true questions of jurisdiction or *vires*. . . . [T]rue jurisdiction questions arise where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter.

(*Dunsmuir*,at para. 59)

1. In the end, I am persuaded by the analysis set out by the Quebec Court of Appeal:

[translation] The question in the instant case relates not to the application of the Charter *per se*, but to a refusal to apply it.

What this question informs is the obligation of a specialized tribunal in applying its enabling legislation to take the Charter, a quasi-constitutional statute, into account.

In my view, the Quebec legislature did not intend to protect the jurisdiction of a specialized tribunal such as the CLP to decide whether to apply the Quebec Charter. That is also a question of general law that is of importance to the legal system, including the system of administrative justice. The applicable standard is therefore correctness. [paras. 35-37 (CanLII)]

* 1. The Purposes of the Act and the Quebec Charter
     1. The Act

1. The Actis the current iteration of the historic compromise between employers and employees regarding compensation for work-related injuries through a no-fault scheme for victims of employment injuries. This purpose is set out in the opening section of the Act:

**1.** The object of this Act is to provide compensation for employment injuries and the consequences they entail for beneficiaries.

The process of compensation for employment injuries includes provision of the necessary care for the consolidation of an injury, the physical, social and vocational rehabilitation of a worker who has suffered an injury, the payment of income replacement indemnities, compensation for bodily injury and, as the case may be, death benefits.

This Act, within the limits laid down in Chapter VII, also entitles a worker who has suffered an employment injury to return to work.

1. This Court has commented on the compensatory nature of the Act:

The evolution and characteristics of this normative scheme show that it is largely independent from the general law. It expresses a well thought-out social compromise between various contradictory forces. . . . It establishes a compensation system that is based on the principles of insurance and no-fault collective liability, the main purpose of which is compensation and thus a form of final liquidation of remedies.

(*Béliveau St-Jacques*, at para. 114)

1. The right to return to work and the right to rehabilitation under the Act are relatively recent additions (see S.Q. 1985, c. 6) to Quebec’s compensation scheme. As explained by the Court of Appeal, the Actitself does not impose a duty to accommodate on the employer; rather, under s. 170 of the Act,the CSST only asks the employer if he has suitable employment available (C.A. reasons, at para. 62). By contrast, the Quebec *Charter* does impose a duty to accommodate on the employer.
   * 1. The Quebec *Charter*
2. The overarching goal of the Quebec *Charter*,as stated in its preamble*,* is the recognition and protection of fundamental rights and freedoms:

Whereas it is expedient to solemnly declare the fundamental human rights and freedoms in a Charter, so that they may be guaranteed by the collective will and better protected against any violation;

1. The Quebec *Charter* protects the right to equality and its corollary, the prohibition against discrimination. Section 10 of the Quebec *Charter* does this in the following terms:

**10.** Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

1. Section 10 of the Quebec *Charter*, however, does not operate in isolation. Rather, its protections operate in conjunction with other protected rights: “. . . the right to non-discrimination cannot serve as a basis for an application on its own and . . . it must necessarily be attached to another human right or freedom recognized by law” (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*,2015 SCC 39, [2015] 2 S.C.R. 789, at para. 54). In the employment context, such rights are set out in ss. 16 to 20 of the Quebec *Charter*. Thus, the duty to accommodate in the employment context is derived from ss. 10 and 16 of the Quebec *Charter* operating together.
2. The duty to accommodate was recognized by this Court in 1985 (a few months after the Act was enacted) (*Ontario Human Rights Commission v. Simpsons-Sears Ltd.*,[1985] 2 S.C.R. 536). It requires accommodation by employers to the point of undue hardship. Deschamps J., for a unanimous Court, summarized the duty:

. . . the duty to accommodate implies that the employer must be flexible in applying its standard if such flexibility enables the employee in question to work and does not cause the employer undue hardship. . . .

. . . the goal of accommodation is to ensure that an employee who is able to work can do so. . . . The purpose of the duty to accommodate is to ensure that persons who are otherwise fit to work are not unfairly excluded where working conditions can be adjusted without undue hardship.

(*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. 13-14)

1. Section 52 of the Quebec *Charter* provides that, save where legislation expressly states the contrary, no provision of any Act may infringe the rights protected in ss. 1 to 38 of the Quebec *Charter*. Thus, these sections of the Quebec *Charter* have primacy over other enactments, in the absence of express derogation. Where a provision infringes these sections of the Quebec *Charter*, the provision is inoperative, subject to justification under s. 9.1 in the case of the rights protected under ss. 1 to 9 (*Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712, at pp. 769-71;see also *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, [2005] 1 S.C.R. 791).
2. Where there is infringement of a right, either by state action or by a private party, s. 49 of the Quebec *Charter* provides the claimant with various remedies. First, the claimant may be awarded compensatory damages. Second, the claimant may be awarded punitive damages, in the case of unlawful and intentional interference with the claimant’s rights. Third, the claimant may be granted an order for the cessation of the interference with his or her rights. In such a case, the law of civil liberties can go beyond the law of civil liability. As stated by LeBel J.:

It is sometimes necessary to put an end to actions or change practices or procedures that are incompatible with the *Quebec Charter* even where there is no fault within the meaning of the law of civil liability. . . . Thus, in the context of seeking appropriate recourse before an administrative body or a court of competent jurisdiction, the enforcement of [the law of civil liberties] can lead to the imposition of affirmative or negative obligations designed to correct or bring an end to situations that are incompatible with the *Quebec Charter*.

(*Communauté urbaine de Montréal*, at para. 26)

In this case, the remedy that is sought falls under this category; Mr. Caron is seeking a reasonable accommodation by Centre Miriam, an affirmative obligation intended to correct a situation incompatible with the Quebec *Charter*.

* + 1. Conclusion on the Purposes of the Act and the Quebec *Charter*

1. The Actand the Quebec *Charter* have different purposes. The Act is a compensatory, no-fault scheme for employment injuries. The Quebec *Charter* has the wider goal of safeguarding fundamental rights, including the right to equality. This includes the duty to accommodate. By contrast, the rights to compensation and to return to work after an employment accident arise from the Act. The two legal schemes are distinct conceptually. Nonetheless, they can intersect in practice.
2. Inflexibility, short of undue hardship, in the application of an employer’s employment standards is a failure to accommodate and, consequently, a discriminatory practice. Unlike the Act,the origin of the disability does not matter for the Quebec *Charter*; while it need not be a workplace accident, it includes disability arising from such an accident. A failure by the employer to reasonably accommodate its disabled employee is discriminatory as it constitutes a violation of the disabled employee’s right to equality. Such victims of discrimination are entitled under s. 49 of the Quebec *Charter* to an order requiring an employer to accommodate them.
3. The CLP’s statement to the effect that the Actconstitutes the full extent of an employer’s duty to accommodate was incorrect in that the CLP had the authority and the duty to give effect to Mr. Caron’s Quebec *Charter* rights, as well as to his rights under the Act*.* Put simply, Mr. Caron’s Quebec *Charter* rights exist *in addition to* his statutory rights under the Act.
   1. Jurisdiction to Grant Remedies Under the Quebec Charter
      1. The *Conway* Test
4. In *R. v. Conway*, 2010 SCC 22, [2010] 1 S.C.R. 765, this Court dealt with whether an administrative tribunal has jurisdiction to grant various remedies under s. 24(1) of the Canadian *Charter*. The inquiry is twofold. The first question is institutional: Does the tribunal have jurisdiction to grant *Charter* remedies? If the tribunal has the power to decide questions of law, the answer to this question is “yes”. The second question is specific to the remedy sought: Can the tribunal grant the remedy having regard to its statutory mandate? This question concerns legislative intent.
5. Certain indicia assist in answering this second question. For instance, prompt and efficient resolution in one tribunal of all matters whose essential character falls within its specialized statutory jurisdiction favours recognizing jurisdiction to grant the remedy sought:

Citizens are permitted to assert their *Charter* rights in a prompt, inexpensive, informal way. The parties are not required to duplicate submissions on the case in two different fora, for determination of two different legal issues. A specialized tribunal can quickly sift the facts and compile a record for the reviewing court.

(*Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, at para. 60)

This facilitates vindication of Canadian *Charter* rights and seeks to avoid the burden and inefficiency of multiple venues; it is better to determine the matter before one administrative tribunal.

1. Likewise, when Canadian *Charter* rights are at risk of being infringed, a tribunal will be empowered to rule on incidental *Charter* questions, unless this jurisdiction is expressly excluded:

. . . where a legislature confers on a court or tribunal a function that involves the determination of matters where *Charter* rights may be affected, and furnishes it with processes and powers capable of fairly and justly resolving those incidental *Charter* issues, then it must be inferred, in the absence of a contrary intention, that the legislature intended to empower the tribunal to apply the *Charter*.

(*R. v. 974649 Ontario Inc.*,2001 SCC 81, [2001] 3 S.C.R. 575 (“*Dunedin*”), at para. 75)

1. In contrast with s. 24(1) of the Canadian *Charter*, s. 49 of the Quebec *Charter* is mute on the topic of competent tribunal. The absence of an express limitation, however, does not mean that there is no implicit limitation; not all tribunals are competent to grant remedies under the Quebec *Charter*. Professors Brun, Tremblay and Brouillet are of this view:

[translation] Section 49 is silent on this subject. Accordingly, it follows that for a tribunal to be competent to rule on a claim under section 49, it must be one that has authority under the ordinary law to grant the remedy sought.

(H. Brun, G. Tremblay and E. Brouillet, *Droit constitutionnel* (6th ed. 2014), at p. 1082)

1. While the *Conway* framework was set out in the context of the Canadian *Charter*, I see no reason why the underlying rationale for the framework should not also apply to the Quebec *Charter*. The similarities between the two instruments have led to significant “cross pollination” in the jurisprudence. Of note, this Court has applied the framework for analysis under s. 1 of the Canadian *Charter* as set out in *R. v. Oakes*,[1986] 1 S.C.R. 103, to s. 9.1 of the Quebec *Charter*.This recognizes the similar justificatory purpose of s. 9.1 of the Quebec *Charter* and s. 1 of the Canadian *Charter*, notwithstanding differences in the text of the two provisions(*Ford*, at pp. 769-71; *Chaouilli*, at paras. 46-48, per Deschamps J.). Conversely, the analytical framework for determining infringements of a person’s freedom of religion initially devised in *Syndicat Northcrest v. Amselem*,2004 SCC 47, [2004] 2 S.C.R. 551, a case regarding s. 3 of the Quebec *Charter*,has helped frame subsequent jurisprudence regarding s. 2(*a*) of the Canadian *Charter* (*Saskatchewan (Human Rights Commission) v. Whatcott*,2013 SCC 11, [2013] 1 S.C.R. 467; *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54, [2017] 2 S.C.R. 386). The similar nature of s. 24(1) of the Canadian *Charter* and of s. 49 of the Quebec *Charter* favours a parallel analytical framework for determining whether an administrative tribunal can grant a remedy under either *Charter*.
2. This is not novel. The Quebec Court of Appeal has applied the *Conway* framework, *mutatis mutandis*, when determining whether the Commission des relations du travail (now also part of the ALT) had jurisdiction to grant a remedy under the Canadian and Quebec *Charters* (*Association des cadres de la Société des casinos du Québec v. Société des casinos du Québec*, 2014 QCCA 603, at paras. 10 and 31 (CanLII)). Further, prior to this Court’s ruling in *Conway*, the Quebec Court of Appeal stated that, given their similar nature, it followed that a grievance arbitrator, being a court of competent jurisdiction under s. 24(1) of the Canadian *Charter*, would also be a court of competent jurisdiction under s. 49 of the Quebec *Charter* (*Université de Montréal v. Québec* (*Commission des droits de la personne et des droits de la jeunesse*),2006 QCCA 508, at para. 55 (CanLII)).
3. Nonetheless, the Quebec *Charter* and the Canadian *Charter* are distinct instruments; as such, they may need to be approached in different ways in various circumstances. The use of the *Conway* framework in this case in no way precludes or detracts from the possibility that distinct approaches may be warranted, depending on the context.
   * 1. The CSST (Now the CNESST)
4. I would recall that the decision under review is that of the CLP and not the initial decision of the CSST; an appeal to the CLP is *de novo* (*Moulin de préparation de bois en transit de St-Romuald v. Commission d’appel en matière de lésions professionnelles*,[1998] C.A.L.P. 574 (Que. C.A.)).
5. The first part of the *Conway* inquiry involves a determination as to whether the tribunal has the authority to decide questions of law. Within the Quebec administrative framework, the CSST (now the CNESST) exercises “administrative functions” within the meaning of the *Act respecting administrative justice*,CQLR, c. J-3, rather than “adjudicative” or quasi-judicial functions. While administrative functions are subject to certain procedural safeguards, they are qualitatively different from adjudicative functions. Notably, adjudicative bodies function in an adversarial setting, presided over by an administrative judge, while administrative bodies give operational effect to legislative schemes in a bureaucratic setting.
6. The statutory grant of powers to the CSST (now the CNESST) in the Act confers exclusive jurisdiction over questions relating to the Act:

**349.** The Commission has exclusive jurisdiction to examine and decide any question contemplated in this Act unless a special provision gives the jurisdiction to another person or agency.

The power to decide questions of law generally is not provided for. The administrative, rather than adjudicative, nature of the CSST (now the CNESST) means that it is not a forum to adjudicate issues relating to Quebec *Charter* rights.

* + 1. The CLP (Now the ALT)

1. By contrast, the CLP expressly had the power to decide questions of law:

**377.** The board has the power to decide any question of law or fact necessary for the exercise of its jurisdiction. [Now repealed, see the *Act to establish the Administrative Labour Tribunal*, at s. 9.]

Its successor, the ALT, has similar jurisdiction pursuant to s. 9 of the *Act to establish the Administrative Labour Tribunal*. This Court has recognized the jurisdiction of the Administrative Tribunal of Québec to rule on constitutional questions incidental to the exercise of its jurisdiction based on a grant of authority set out in the same words as quoted above (*Okwuobi v. Lester B. Pearson School Board*, 2005 SCC 16, [2005] 1 S.C.R. 257). The answer to the first question under the *Conway* analysis is therefore “yes”: the CLP (now the ALT) had jurisdiction to grant remedies under the Quebec *Charter* in relation to issues that arose in carrying out its statutory mandate.

1. The second leg of the *Conway* framework asks whether the specific remedy sought fits the tribunal’s statutory framework. The remedy sought in this case is an order that would require Centre Miriam to accommodate Mr. Caronwhen determining whether it has suitable employment (CLP decision, at para. 14). In my view, the CLP had (and the ALT now has) authority to grant this remedy. Whether granting such a remedy is warranted in the circumstances is another matter, one yet to be determined.
2. The general considerations noted above in *Weber* and *Dunedin* are applicable to this case. The CLP was a sophisticated quasi-judicial tribunal that allowed for thorough exploration of issues through an adversarial process. There was no language in the Act that excluded the power to grant remedies under the Quebec *Charter*.As well, it is clearly undesirable that Mr. Caron be forced to go first to another forum to obtain a ruling on the Quebec *Charter* issue and only then appeal to the CLP to obtain a final determination with regard to accommodation.
3. The CLP was given broad powers to carry out its statutory mandate. As the CLP heard appeals *de novo* pursuant to s. 377 of the Act, it was not bound by findings of the CSST; rather it could freshly consider facts and issues relevant to the matter before it. The CLP was vested with the powers necessary to the performance of its duties and could make suitable orders to safeguard the rights of parties (s. 378 of the Act). The type of remedy sought here fell within the powers granted to the CLP and now the ALT (see s. 9 of the *Act to establish the Administrative Labour Tribunal*).
4. I would respectfully disagree with my colleague’s statement that the effect of s. 438 of the Act is that “there is no other recourse for an injured worker” (reasons of Abella J., at para. 18). Finding that the CLP had authority to make an order requiring a reasonable accommodation does not conflict with this provision. This Court has heldthat this section “applies to an action for damages under the [Quebec] *Charter* based on the events that gave rise to the employment injury” (*Béliveau St-Jacques*,at para. 130). This prohibition is inapplicable here since the remedy sought by Mr. Caron under s. 49 of the Quebec *Charter* is not grounded in civil liability (*Communauté urbaine de Montréal*, at para. 26) and is not “by reason of his employment injury” under s. 438 of the Act.
5. Therefore, in stating that it could not grant a remedy under the Quebec *Charter*, the CLP erred in determining that its statutory grant of power did not give it authority to decide this matter. This decision was incorrect.
   * 1. Jurisdiction of the Grievance Arbitrator
6. The Quebec Court of Appeal dealt also with the jurisdictional interplay between grievance arbitrators, on the one hand, and the CSST and the CLP, on the other hand, when a collective agreement provides greater benefits than those contained in the Act (*Université McGill v. McGill University Non Academic Certified Association (MUNACA)*, 2015 QCCA 1943). This issue does not arise in this case. I would note only that substantive rights and obligations under the Quebec *Charter* are incorporated into collective agreements concerning which an arbitrator has jurisdiction (*Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42,[2003] 2 S.C.R. 157, at para. 23).
7. The Duty to Accommodate
8. The duty to accommodate in situations such as this does not require an employer to create a new position from scratch for a disabled employee. This would not be a reasonable accommodation*.* Rather, it means that when an employer is looking at available positions, the employer is required to consider whether it has any suitable employment under s. 170 of the Act, for instance, *and* also what its obligations under the Quebec *Charter* require with respect to flexibility in work standards. If what stands in the way of a position being suitable is a reasonable accommodation (to the point of undue hardship), then the employer is required by the Quebec *Charter* to take the steps needed to accommodate the disabled employee. Where the employer fails to do so, the CLP has authority to make an appropriate order.
9. One can understand the frustration of employees who would have to seek a decision by the CSST, have it reviewed within that organization and then appeal the matter to the CLP where, after a hearing *de novo*, an order requiring an accommodation may be made. I would offer a few remarks. First, the fact that the CSST cannot compel an employer to accommodate an employee does not mean that the CSST cannot discuss with the employer its duty to accommodate. Indeed, one would hope that the CSST would assist employers to understand not only the rights of workers under the Act, but also those under the Quebec *Charter*.
10. Second, the duty to accommodate does not come into existence once the matter is before the CLP. Rather, the duty to accommodate exists by virtue of the Quebec *Charter*;the CLP adjudicates the application of the duty where there is a dispute between an employer and a disabled employee. Good faith by the employer in the realization of its obligations should mean that the CLP’s involvement will be the exception and not the rule.
11. Finally, the difference in the jurisdiction of the CSST and the CLP reflects the different roles assigned to each by the Act. The fact that the CLP has a power to decide any question of law and the CSST does not have such power has consequences for what each can do. Adjudicating issues relating to the Quebec *Charter* is a function for which the CLP is equipped; this differs from the role of expeditious administrative decision maker carried out by the CSST. The National Assembly can revisit this attribution of authority in the future if it so chooses.
12. Conclusion
13. Like my colleague, I would dismiss the appeal with costs and return the matter to the ALT for a determination of whether the duty to accommodate has been satisfied in Mr. Caron’s case, and if not, whether the time limit precludes any remedy in the circumstances.

*Appeal dismissed with costs.*

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1. CQLR, c. A-3.001. The dispute in this case arose prior to amendments to the *Act* which came into force on January 1, 2016. The amendments replaced the Commission de la santé et de la sécurité du travail (“CSST”) with the Commission des normes, de l’équité, de la santé et de la sécurité du travail (“CNESST”) and replaced the Commission des lésions professionnelles (“CLP”) with the Administrative Labour Tribunal’s (“ALT”) occupational health and safety division. Their roles have not changed substantively. The reasons refer to the CSST and CLPthroughout and provide references to the *Act* as it stood at the time of the CLP’s decision. Where these provisions no longer exist, the reasons cite to the updated provisions to reflect the amendments that came into force in 2016. [↑](#footnote-ref-1)
2. Sections 236 and 240 of the *Act*. [↑](#footnote-ref-2)
3. Sections 239 and 240 of the *Act*. [↑](#footnote-ref-3)
4. As noted above, amendments to the legislation came into force on January 1, 2016. The CSST was replaced by the CNESSTand the CLP was replaced by the ALT’s occupational health and safety division. Though the names of the organizations have changed, their substantive roles have remained the same. [↑](#footnote-ref-4)
5. Section 349. [↑](#footnote-ref-5)
6. Section 351 para. 1. [↑](#footnote-ref-6)
7. Section 358. [↑](#footnote-ref-7)
8. Section 359. [↑](#footnote-ref-8)
9. Section 369 (now repealed). See the *Act to establish the Administrative Labour Tribunal*, CQLR, c. T-15.1, at s. 1 para. 2 and s. 6. [↑](#footnote-ref-9)
10. Section 377 para. 2 (now repealed). See the *Act to establish the Administrative Labour Tribunal*, at s. 9 para. 2(4). [↑](#footnote-ref-10)
11. Section 377 para. 1 (now repealed). See the *Act to establish the Administrative Labour Tribunal*, at s. 9 para. 1. [↑](#footnote-ref-11)
12. Section 378 para. 2 (now repealed). See the *Act to establish the Administrative Labour Tribunal*, at s. 9 para. 2(3). [↑](#footnote-ref-12)
13. CQLR, c. C-12. [↑](#footnote-ref-13)
14. The only exception may be under a collective agreement pursuant to ss. 4 and 244 of the *Act*. [↑](#footnote-ref-14)
15. Sections 242 para. 1 and 235(1). [↑](#footnote-ref-15)
16. Sections 173 para. 1 and 174. [↑](#footnote-ref-16)
17. Sections 48 and 57(1). [↑](#footnote-ref-17)
18. Sections 242 para. 2 and 235(1). [↑](#footnote-ref-18)
19. Section 49 para. 1. [↑](#footnote-ref-19)
20. Sections 171, 172 and 173 para. 2. [↑](#footnote-ref-20)
21. Section 145. [↑](#footnote-ref-21)
22. Section 145 et seq. [↑](#footnote-ref-22)
23. Section 166. [↑](#footnote-ref-23)
24. Section 167. [↑](#footnote-ref-24)
25. Section 181. [↑](#footnote-ref-25)
26. Section 281. [↑](#footnote-ref-26)
27. Section 326. “[B]enefit” is defined under s. 2 as compensation or an indemnity paid in money, financial assistance or services furnished under the *Act*. [↑](#footnote-ref-27)
28. **176.** The Commission may reimburse the cost of adapting a position if the adaptation enables a worker who has sustained permanent physical impairment as a result of his employment injury to carry on his employment, equivalent employment or suitable employment.

    The cost includes the expenses incurred for purchasing and installing the materials and equipment necessary for adapting the position, but no cost may be reimbursed except to the person who incurred it with the prior authorization of the Commission to that effect. [↑](#footnote-ref-28)
29. Section 166*.* [↑](#footnote-ref-29)
30. **240.** The rights conferred by sections 236 to 239 may be exercised

    (1) within one year following the beginning of the period of continuous absence of the worker as a result of an employment injury if he held employment in an establishment numbering twenty workers or fewer at the beginning of the period; or

    (2) within two years following the beginning of the period of continuous absence of the worker as a result of an employment injury if he held employment in an establishment numbering more than 20 workers at the beginning of the period.

    The fact that a worker returns to work following medical advice does not interrupt his period of continuous absence if, as a consequence of his injury, the state of his health related to his injury forces him to leave his work the day he returns. [↑](#footnote-ref-30)