APPENDIX G
Important Cases dealing with accommodation

ISSUE	CASE NAME	SUMMARY
Employers must be proactive when designing standards	Meiorin (1999) *(British Columbia (PSERC) v. British Columbia Government and Services Employees' Union)*	Supreme Court of Canada imposes positive obligation on employers to accommodate workers. In this specific case, a female fire fighter was found to be discriminated against when the employer instituted a standardized fitness test that did not adequately take into account the differences between men and women. Note: also radically changes specific points of accommodation law set out in earlier cases, e.g. accommodation to the point of undue hardship must be made before a BFOR can be established.
Reaffirms Meiorin	Grismer (1999) *(Grismer v. British Columbia (A.G.)*	Supreme Court of Canada reaffirms its decision in ***Meiorin*** applying it to a disability case. Emphasizes that individualized versus standardized testing must be used.
Post-Meiorin cases		
Human rights duty to accommodate trumps other laws on return to work	*Quebec (Commission des normes, de l'équité, de la santé et de la sécurité du travail) v. Caron, 2018 SCC 3*	The Supreme Court of Canada affirmed that the duty to accommodate in employment is a separate (and paramount) consideration from any other specific legislative requirement that addresses an employee's ability to return to work.
Mental health, duty to accommodate may include transferring employee to another workplace	*Emond v. Treasury Board (Parole Board of Canada), 2016 PSLREB 4*	A Public Service Labour Relations and Employment Board adjudicator ruled that the Parole Board of Canada failed in its duty to accommodate one of its employees by refusing her request to work in a different building after she developed mental health problems triggered by a threatening and disruptive colleague. The Board ordered that the employee be moved to a different building and compensated for lost wages and benefits.

Forced retirement, employer must look in other departments	Nicol v. Treasury Board (Service Canada (2014 PSLREB 3)	The worker had been off on disability leave for an extended period. When he was ready to return to work, he provided all the necessary information about his medical conditions and accommodation needs, but Service Canada never provided him with a suitable job offer. After years of fighting for accommodation, he was forced to take medical retirement. The Board found that Service Canada failed to meet its legal duty to accommodate. The Board stated that the employer was trying "to force the grievor to accept a demotion without proper accommodation or to quit" and that he was ultimately "cornered[…] into applying for medical retirement as the only way he could see to obtain some income". Service Canada had an obligation to look for suitable jobs in other departments within the public service, but failed to do so.
Family status (child care)	Johnstone (2014) (Canada (Attorney General) v. Johnstone, 2014 FCA 110)	Federal Court of Appeal upheld the decision of the Canadian Human Rights Tribunal. The decision found the Canada Border Services Agency (CBSA) discriminated against Fiona Johnstone by failing to accommodate her family obligations. The Court confirmed that human rights legislation is to be interpreted in a broad and liberal manner and that family status includes child care and other legal family obligations.
Family status (Eldercare)	Hicks (Hicks v. Human Resources and Skills Development Canada, 2013 CHRT 20)	Worker was asked to relocate to Ottawa in another public service job; his wife stayed behind to care for her ailing mother. Her mother depended on her both physically and emotionally and was not well enough to travel to Ottawa. Mr. Hicks applied for an expense claim under the federal government's relocation directive and was denied. The Tribunal found that the HRSDC had discriminated against Mr. Hicks based on the ground of family status, stating that eldercare should be recognized the same way child care is.

Mental health, duty to inquire	*Mackenzie v. Jace Holdings and another (No. 4), 2012 BCHRT 376*	The B.C. Human Rights Tribunal held that an employer should have inquired about an employee's behaviour following a stress leave rather than dismissing her. There were sufficient signs from the employee to cause the employer to make inquiries into whether accommodation was needed.
Accommodation of environmental sensitivities	*Cyr v. Treasury Board (Department of Human Resources and Skills Development) 2011 PSLRB 35*	The grievor filed a grievance against the employer for making it difficult to obtain the accommodation to which she was entitled. The grievor suffered from environmental hypersensitivity, and telework was the accommodation recommended by the physician. The adjudicator found that the employer failed in its duty to accommodate by trying to change the grievor's work arrangement without consulting her and by failing to provide the required work tools in a timely fashion.
Religion	*Qureshi v. G4S Security Services, 2009 HRTO 409*	The Ontario Human Rights Tribunal ruled that a new applicant who needed one hour off work to pray was not properly accommodated. In awarding both monetary damages as well as orders to develop a policy and training program, the Vice-chair was particularly critical of the failure to engage any accommodation process.
Duty to accommodate is employer-wide	*O'Leary v. Treasury Board (Dept. of Indian Affairs and Northern Development) 2007 PSLRB 10*	A grievor was found to be unfit to return to work in an isolated post after developing a disability. The employer did not offer any position other than at the isolated post. As a result the grievor was unemployed for most of the time since filing the grievance. The arbitrator found that the obligation to accommodate an employee due to a medical condition was employer-wide and not limited to a region or a department.

Duty to inquire, term contract	Mellon v. Human Resources Development Canada, 2006 CHRT 3	An employee who did not disclose her mental health disability to the employer experienced panic and anxiety attacks in the workplace over a four-month period and thereafter the employer did not renew her contract. Earlier she had taken a sick leave because of emotional stress related to work. After reviewing the circumstances, the adjudicator ruled that the employer should have known that the worker was experiencing anxiety and had a duty to accommodate even though she didn't tell them.
Absenteeism	Desormeaux v. Ottawa (City), 2005 FCA 311	The Court of Appeal upheld the CHRC's finding that the employer would not suffer undue hardship by continuing to employ the worker despite her disability and resulting absenteeism, because there were other jobs she could do that would lessen the impact of her absenteeism
Human rights law is part of collective agreement	Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324, [2003] 2 SCR 157, 2003 SCC 42	This decision has the effect of automatically incorporating human rights legislation into every collective agreement between unions and employers. Even if a collective agreement does not expressly prevent the parties from violating a particular statutory right (i.e. human rights), such a violation will amount to a violation of the collective agreement. Human rights and other employment-related statutes establish a floor or a minimum which an employer and union cannot contract out of or beneath.
Employment tests	Canada (Attorney General) v. Green, [2000] 4 FC 629, 2000 CanLII 17146 (FC)	Employers should ensure any employment tests used properly assess skills being tested and that accommodations for testing be put in place. Accommodation for training must be put in place as well.
Medical exam by employer's chosen doctor	Canada (Attorney General) v. Grover 2007 FC 28	The federal court upheld the adjudicator's decision, ruling that "the employer cannot order an employee to submit to a medical examination by a doctor chosen by the employer unless there is some express contractual obligation or statutory authority." (This decision was subsequently upheld by the Federal Court of Appeal.)

Religion	407 ETR Concession Company v. CAW-Canada, 2007 CanLII 1857 (ON LA)	An Ontario arbitrator reinstated three grievors after they were discharged for refusing to use a biometric scanning system due to their religious beliefs, ruling that the Company could have gone further in accommodating the grievors.
Independent medical	Marois and Hubert v. Treasury Board (Correctional Service of Canada) 2004 PSSRB 150	While this decision does not deal specifically with the duty to accommodate, it does deal with the issue of medical information, in this case in support of a maternity-related re-assignment. In this decision, the Public Service Staff Relations Board ruled that Health Canada physicians are not independent from the employer (the Government of Canada) and as such a Health Canada medical report does not constitute an "independent medical opinion".
Union's duty	Bingley (Re), 2004 CIRB 291	The Canadian Industrial Relations Board has held that the union had not adequately represented an employee in a duty to accommodate case. In duty to accommodate cases, the Board expects a higher standard of representation from the union.