



Information Guide

Processing an accommodation request

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Presentation

This guide on the duty to accommodate provides appropriate advice and relevant information to help you complete each of the five steps in the processing of an accommodation request.

For whom?

For anyone who must process a request for reasonable accommodation, whether you are:

- An employer
- A manager
- A service provider
- A human resource advisor or
- A union advisor or a member of a union executive

Why?

- To understand your legal obligations under the [Québec Charter of Human Rights and Freedoms](#)
- To prevent discrimination in your workplace
- To identify reasonable accommodation's key indicators
- To support and guide you in your decision-making process

How?

- By proposing a step-by-step process to respond to a reasonable accommodation request
- By providing up-to-date information as the law evolves
- By providing tools to ensure that the granting or refusal of a reasonable accommodation is in keeping with the principles of the Québec Charter of Human Rights and Freedoms

Processing a reasonable accommodation request: A step-by-step approach

Step 1: Receiving the request

The reasonable accommodation **applicant** is a person who may be experiencing discrimination and is taking steps in an effort to exercise his or her right to equality.

You are the decision maker: an employer, service provider, manager or union official that must process a reasonable accommodation request and decide the outcome to the request.

1. Meet with the person requesting the accommodation

An in-person meeting is useful for starting a direct discussion, therefore avoiding too many intermediaries. This meeting allows the parties to state their needs with a view to finding the best solution.

We provide a [roadmap](#) to guide you during the processing of the request. It allows you take note of any relevant information, meetings held, possible solutions and necessary follow-up action.

2. Gather relevant information

The applicant must provide you with information on the exact nature of the request. This information must enable you to relate the request to one of the [grounds of discrimination set out in the Charter](#).

Only the necessary information may be requested. **Be careful:** Do not ask overly intrusive questions that are not truly related to the request.

For example, in the case of an accommodation request related to a disability, there must always be a rational link between the medical information gathered and the [employee's ability to perform the essential duties associated with their position](#).¹

Respect the confidential nature of the information provided.

3. Commit to responding to the request within a reasonable delay

As a decision maker, you must process the request within a reasonable timeframe while also taking the time to properly analyze the situation.

The applicant cannot demand an on-the-spot response and should avoid, as far as possible, submitting a last-minute request.

Step 2: Analyzing the request

1. Ensure that the request is, by definition, an accommodation request

A reasonable accommodation measure aims to prevent or correct a situation of discrimination, whether intentional or not. At this stage, you must be able to establish a link between the request and one of the grounds of discrimination prohibited by the Charter.

Be careful: Not all requests are requests for accommodation.

For example, preference for a work schedule that allows an employee to practise certain hobbies is not protected under the Charter. It therefore does not constitute an accommodation based on the Charter.

2. Get background information

Avoid improvising. This guide provides considerable information about the duty of reasonable accommodation. Follow the hyperlinks included – they will allow you to gain further in-depth knowledge on the subject.

3. Process the request objectively

Avoid being influenced by your opinions, beliefs, prejudices or stereotypes, which could skew your analysis. As a decision maker, such an attitude will allow you to efficiently fulfill your [roles and responsibilities](#) related to reasonable accommodation.

It is best to distinguish the accommodation request as such from any professional judgment you may have of the applicant. As an employer, you must process and analyze the request objectively and in good faith. Gaps in performance, quality of work and team spirit cannot serve as an excuse for refusing to accommodate.

In most cases, such human resource management issues require separate measures. And sometimes, these issues stem from the fact that a person's accommodation needs are not being met.

Consider different solutions to accommodate the applicant. Do not give up if you face a hurdle. There are surely alternatives and other solutions to explore.

Step 3: Joint search for solutions

1. Involve the applicant in the search for solutions

As a decision maker, you play a leadership role during the processing of a request for accommodation and must seriously seek a solution. The applicant also [plays specific roles and has individual responsibilities](#) throughout the process and must contribute to the search for solutions.

- Organize one or more meetings with the applicant.
- Present your needs, identify possible sources of hardship and try to reach a compromise. In some cases, the union may also be involved in the process.
- Consider different solutions to accommodate the applicant. Do not give up. There are surely alternatives and other solutions to explore.

2. Be innovative and creative

The duty to accommodate calls for an individual processing method. There may be more than one possible solution. For example, a request may be reasonable if it is submitted to a large organization, but unreasonable when it is submitted to a small business. Requests must be analyzed on a case-by-case basis. It is therefore important to be innovative and creative. In many cases, all you have to do is allow for some flexibility in the application of the organization's general rules of operation.

3. Apply undue hardship criteria with care

Remember that you are required to accommodate the applicant unless doing so represents an [undue hardship](#). Undue hardship is assessed on a case-by-case basis. The assessment must consider, among other elements, the impact the accommodation will have costs, work organization, security and the rights of others.

Be careful: A simple hardship or constraint does not constitute undue hardship. For example, a manageable inconvenience relating to work organization cannot be considered an undue hardship.

A small inconvenience, nor the fear of launching a “snowball effect”, that is, of setting a precedent that would open the doors to other demands, cannot be considered undue hardship.

Applying undue hardship criteria requires good judgment and tact on your part. It is important to support your approach with an objective assessment of the facts that includes all relative factual background.²

Be careful: Stick to realistic possibilities and not to any improbable apprehensions. And remember, undue hardship must not be invoked as an excuse not to accommodate.

In some cases, the initial request may cause undue hardship, but the decision maker must still look for an alternative that will meet the needs of the applicant, as much as possible.

The accommodation request may be denied if no other measure can be put into place without causing undue hardship.

For more details, see the [criteria for assessing undue hardship](#).

Step 4: Decision-making and communications

1. Choose the most appropriate solution

Once you have the accommodation request analysis and the joint search for solutions have been completed, you must now make a decision that meets the applicant's needs, unless it causes undue hardship.

2. Explain your decision

This step is crucial. In all cases, it is important that the applicant understand the reasons for your decision.

- If an accommodation is granted: provide the applicant with the terms and limitations of the measure.
- If an accommodation is denied: justify your decision.

3. Put the terms of the agreement in writing

Inform the applicant of your decision in writing. This letter will provide a detailed understanding of the accommodation and will prevent any possible confusion. Moreover, this letter will allow you to keep a record of the process in the employee's or the service recipient's file. This way, if a similar accommodation is requested, the details related to the granted measure may serve as a model, even though a case-by-case logic must always prevail when it relates to accommodation.

Step 5: Implementing the accommodation measure and following up

1. Ensure that the applicant actually benefits from the requested accommodation

Once the accommodation is granted, you still have roles and responsibilities.

In order to facilitate the implementation of the accommodation, make sure, for example, that you have transmitted the information to this effect to the individuals concerned.

After some time, meet with the applicant to assess the situation. The union must remain vigilant at this stage. It must follow up regularly with the applicant and forward any necessary request to the employer when appropriate.

All parties must ensure that the agreement is respected.

2. Adjust, as needed, the accommodation measure granted

Once granted, an accommodation measure may require some fine-tuning.

There are several circumstances that may justify amending a previously granted accommodation, including:

- Changes related to the applicant
 - For example, the deterioration of his or her medical condition
- Changes in how work is organized
 - For example, a work shift reorganization
- Variations in the economic environment
 - For example, an industry-wide labour shortage

An accommodation measure granted can therefore become insufficient or, conversely, overly restrictive and cause undue hardship. You must then look for an accommodation measure that is better adapted to this new situation.

Also, if policies or new practices are in place, ensure that they do not interfere with the accommodation granted and adjust as needed.

3. Be proactive

Develop tools to facilitate the processing of any future request. It is important to be proactive. For example, training on reasonable accommodation and discriminatory harassment may facilitate the implementation and acceptance of an accommodation measure.

Similarly, ensuring that the procedures are understood by everyone will ensure the efficient processing of applications. For example:

- Establish an in-house support service or consult an expert
- Distribute forms or other information tools
- Adopt an anti-discrimination and reasonable accommodation policy

Four basic rules relating to accommodation

- 1) The responsibility to accommodate lies with the decision maker.
- 2) The decision maker has an obligation of means, not of results.
- 3) All accommodation requests must be processed individually.
- 4) The responsibility to accommodate lies with the decision maker, but all parties must work together to find a solution.

For more information see [the four basic rules relating to accommodation](#) in the Resources and Tools section.

Resources and Tools

Assessment of undue hardship

The pivotal concept of undue hardship serves as an important indicator for the duty of reasonable accommodation. It determines whether or not an accommodation can be granted, and, if granted, to what extent. The *reasonable character* of an accommodation implies *the absence of undue hardship*.

Accommodation: a circumstantial and conditional measure

The outcome of a request for accommodation — to accommodate or not to accommodate — will always depend on the specific context in question. For every request for accommodation there is a solution that doesn't necessarily apply to another case, even within the same organization. Any individual request made within a particular context may cause varying levels of undue hardship. Similarly, the conclusions drawn from a specific case law do not automatically determine the outcome of other cases. This is why the decision maker has the obligation to examine each application individually.

Reasonable accommodation in this sense is a circumstantial and conditional obligation. In other words, accommodation will be granted provided the requested measure does not impose undue hardship within a *given context*.

Scope of the decision maker's duty to accommodate

The employer's duty to accommodate is not unlimited. According to related case law, "the possibilities of accommodation are never infinite". As can be read in the *Hydro-Québec* decision:

« The test is not whether it was impossible for the employer to accommodate the employee's characteristics. Although the employer does not have a duty to change working conditions in a fundamental way, it 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 work. »³

Put simply, the duty of reasonable accommodation is not intended to distort the essence of the work contract.⁴ This contract implies a normal and consistent work performance in return for a suitable salary and working conditions.

However, sometimes an employee, for health reasons, is unable to meet, in part or completely, the obligations of their employment contract. Despite the provisions under the [Act Respecting Labour Standards](#) or the existence of a collective agreement that specifies a fixed number of days off, additional time may have to be granted to the extent that the employee will be able to return to work in the reasonably foreseeable future.⁵ In this context, an employer cannot simply apply the prescribed time limits mechanically⁶, and must try to allow for some flexibility when applying this standard in order to uphold Charter principles.

Although the duration of the disability may vary, it cannot be unlimited. An employer does not have to wait indefinitely for the rehabilitation of an employee.⁷ The latter must be able to establish that he or she is able to return to work in the reasonably foreseeable future.

Several circumstances may, however, call into question the accommodation granted:

- An employee has been declared to be disabled and unable to resume work in the reasonably foreseeable future⁸
- An employee was granted some adaptation measures but remains unable to resume work
- An employee made several failed attempts to return to work
- An employee received a pessimistic prognosis⁹
- etc.

In certain situations, a medical expertise may become necessary, particularly in order to establish the exact nature of the limitations and to determine a prognosis for recovery. However, the use of medical expertise must be justified and strictly supervised. Requiring an employee to undergo a medical test can infringe on his or her right to integrity. It may also constitute an infringement of the right to privacy.

The expertise must be limited to the verification of information that is related to the accommodation request. Similarly, the information contained in a medical report must remain confidential. Certain precautions must be taken in this regard: employee medical files held separately from employee human resource file, limited access to the medical file, etc.

For more information on this subject, see the following Commission des droits de la personne et des droits de la jeunesse opinions:

- [Application and Interpretation of Section 18.1 of the Charter, Feb. 2016](#)
- [Les tests psychologiques et psychométriques en emploi, juin 1998](#)
- [Les examens médicaux en emploi, juin 1998](#)
- [La compatibilité avec la Charte québécoise des tests de drogue en emploi, juin 1998](#)
- [L'utilisation des informations obtenues lors d'un examen médical pré-embauche pour contester une réclamation pour lésion professionnelle et le droit au respect de sa vie privée, novembre 1990](#)
- [Collège des médecins du Québec, « La médecine d'expertise », septembre 2006, p. 8.](#)

Criteria for assessing undue hardship

The following criteria for assessing undue hardship are not intended to be exhaustive and must be applied "with common sense and flexibility".¹⁰

And finally, keep in mind that a minor inconvenience does not constitute undue hardship,¹¹ meaning that a measure can cause some interference without being unreasonable. In other words, a certain level of hardship remains within the range of what is reasonable.

a) Financial and material resources

- The actual cost of the accommodation requested
- The company's total operating budget, including any loans, grants or tax credits
- The private or public nature of the organization
- The company or institution's financial health
- The overall economic conditions
- etc.

Questions to help find solutions:

- Is the accommodation measure's cost calculated on the organization's total budget, including any loans, grants or tax credits?
- If the cost of the measure sought is too high, are there less expensive alternatives?
- How could the applicant help minimize the cost of the requested measure?

b) Work organization and operations

- Nature of the business or institution
- Adaptability of the premises, facilities and work equipment
- Availability of space within the premises
- Effect on productivity, performance and workload
- Number of employees affected by the proposed measure
- Interchangeability of employees
- Duration and scope of the accommodation
- etc.

Questions to help find solutions:

- Does the accommodation applicant hold a key or a secondary position in the organization?
- Will the accommodation measure have a measurable impact on the company's productivity? If so, what kind of impact, and are there ways to counteract any decrease in productivity?
- Will the accommodation measure result in extra work for other employees? If so, to what extent, and are there any mitigation measures that could help reduce their workload?
- Could using a pool of on-call workers be a viable solution?
- Would staff be ready and willing to swap shifts, either temporarily or on a permanent basis?
- Is the organization experiencing labour shortages?
- Does the organization have sufficient space?
- How could the applicant help minimize the effect of the accommodation measure on work organization?
- Does the applicant have the opportunity to rearrange his or her work schedule in order to make up, fully or in part, missed hours of work.

c) Security and impact on the rights of others

- Risk to the health or security of others or of the applicant
- Extent of the risk
- Characteristics of those who bear the risk¹²
- Adverse effect on the actual exercise of the rights of others or on the applicant's rights
- Collective agreement¹³
- etc.

Questions to help find solutions:

- Are there legislative requirements related to the security standard in question?
- What level of security must be maintained?
- Is this a real or a hypothetical risk?
- What might happen that could be harmful?
- What is the probability that the risk will become a reality?
- If there were to be any harm caused, how serious would it be?
- Who would be affected if the risk became a reality? Are they vulnerable people (children, people who are sick or who are experiencing a loss of autonomy, etc.)?
- Is there a serious or negligible infringement of other people's rights?
- Is this a serious violation of the collective agreement provisions, and are there any other means that are more in keeping with the agreement?
- Is it possible to come to an agreement with the union that would allow for some flexibility in the application of certain collective agreement clauses?
- Can the applicant help to minimize the impact of the measure as it relates to security, to the rights of others or to the collective agreement?

Roles and responsibilities of the parties

During the processing of a reasonable accommodation request, the parties involved must take on various responsibilities. Applicant, decision maker and union each play different roles at different levels. Some responsibilities are shared among the parties while others are specific to each one. In addition, these responsibilities sometimes extend beyond the decision-making stage.

Keep in mind that in some cases courts have recognized that one of the parties did not properly fulfill its responsibilities and, as a result, failed to accommodate. In this context, the procedure for processing the request for accommodation as well as the adequate understanding of the roles assigned to each party can be of considerable importance.

During the processing of an accommodation request

Applicant

- Clearly communicate the nature of the request to those responsible
- Provide the decision maker with the information needed to process the request
- Give the decision maker time to evaluate the application
- Act in good faith
- Be proactive in finding solutions
- Act in a way that helps reaching a compromise

Decision maker

- Receive the request
- Analyze the request's merits under Section 10 of the Québec Charter
- Assess the concrete impact of the requested accommodation measure
- Act with caution when gathering personal information and ensure the confidentiality of any information obtained
- Process the request within a reasonable timeframe
- Act in good faith
- Be proactive in seeking solutions
- Allow for flexibility when evaluating operating standards and internal practices
- Allow for flexibility when evaluating the collective agreement rules

Union *

- Represent the applicant, if he or she requests it
- Assess the concrete impact of the requested accommodation measure
- Ensure the confidentiality of any information obtained
- Collaborate in seeking solutions
- Act in good faith
- Allow for flexibility when evaluating the collective agreement rules
- Give the decision maker reasonable time to evaluate the request

* When the request is related to a unionized employee or a section of the collective agreement

Once the decision has been made

Applicant

- Comply with a fairly reached decision
- Respect the accommodation agreement reached

Decision maker

- Justify the decision in case of refusal
- Implement the chosen accommodation measure
- Comply, where applicable, with the accommodation agreement
- Ensure that the applicant truly benefits from the accommodation granted
- Readjust, if necessary, the accommodation measure
- Inform and educate as needed: managers, employees, clients or service recipients
- Modify operating standards and any discriminatory internal practices

Union

- Support a fairly reached decision
- Comply, where applicable, with the accommodation agreement
- Ensure that the applicant truly benefits from the accommodation granted
- Readjust, as need, the accommodation measure
- Explain the agreement to union members, ensuring that the confidential aspects are respected

Four basic rules relating to accommodation

First rule: The responsibility to accommodate lies with the decision maker.

Once a discriminatory situation has been identified, the decision maker, whether an employer, manager or service provider, plays a leadership role during the processing of the accommodation request. The courts assigned this responsibility to the decision maker for two main reasons:

- The decision maker's position at the head of the company, organization or institution allows for a comprehensive understanding of the context and an effective assessment of actual impacts of the measure.
- Anyone who intentionally or unintentionally limits the exercise of a right must always provide justifications.

Although the decision maker bears the burden of accommodation, he or she does not have the monopoly over the process of finding solutions. Indeed, the decision maker must involve the applicant and the union, where applicable, in seeking solutions that will help reach a suitable and viable agreement for all parties.

Finally, in the event of a dispute, the decision maker must prove that he or she has made every effort to reach a reasonable accommodation with the applicant. Otherwise, the courts might establish that the decision maker has not properly fulfilled the duty to accommodate.

Second rule: The decision maker has an obligation of means, not of results.

The decision maker has an obligation of means, not of results, that is to say that he or she must receive the request, analyze it carefully and justify the decision. However, the decision maker has no obligation to comply with every request submitted. No request can obtain an automatic accommodation measure because the final decision must always be subject to the assessment of undue hardship. The accommodation must be reasonable. The applicant cannot expect an immediate, positive response nor an accommodation measure that answers all of the demands in the original request.

Third rule: All accommodation requests must be processed individually.

All accommodation requests must be analyzed individually, that is, on a case-by-case basis. This approach remains relevant even though several people request a similar accommodation measure. There is no common recipe that can be applied to a request. In the workplace, for example, an accommodation request could be examined in light of criteria such as the type of work, position in the work organization (key or secondary), the interchangeability of employees, etc.

Case law serves as an important indicator when it comes to accommodation. Court decisions must, however, be analyzed with each request's unique context in mind. The conclusions drawn from a specific case law do not automatically determine the outcome of other cases.

Always keep in mind that reasonable accommodation remains a circumstantial and conditional measure: The accommodation will be granted provided the requested measure does not impose undue hardship within a *given context*. The search for solutions does not end when a proposed measure reaches the point of undue hardship. Other possibilities must be examined.

Fourth rule: The responsibility to accommodate lies with the decision maker, but all parties must work together to find a solution.

A request for reasonable accommodation usually involves several parties. Though the responsibility to accommodate lies with the decision maker, other parties share the responsibility. An accommodation measure should never be made unilaterally.

The applicant must also contribute to the search for solutions and act in good faith. In some cases, non-collaboration may lead to the failure of an accommodation. On the other hand, the applicant cannot demand a perfect solution, but must instead expect a "reasonable compromise".¹⁴ This principle has long been established by case law.¹⁵

In a unionized workplace, the union may also be called upon to participate in the process due to its role as employee representative. Whether or not the request is made as part of a grievance, the union will support the applicant and will, on some occasions, explain the accommodation measure granted to its members. The union must also allow for flexibility when evaluating the provisions of the collective agreement.¹⁶

Employer's tracking sheet

GENERAL INFORMATION RELATED TO THE REQUEST

Applicant: _____

Date: _____

Received by: _____

REQUEST

Description:

Prohibited ground of discrimination cited: _____

Information required to process the request:

MEETING(S)

Date(s)	Parties present

SOLUTIONS BEING CONSIDERED

Solution 1:

Solution 2:

Solution 3:

POSSIBLE IMPACTS OF THE SOLUTIONS BEING CONSIDERED

Solutions	Costs	Work organization	Security and the rights of others
Solution 1			
Solution 2			
Solution 3			

DECISION(S)

Description and justification:

Submission method:

- Verbal agreement / Date:
- Written agreement / Date:
- Letter of refusal / Date:

IMPLEMENTING THE ACCOMMODATION AND FOLLOW-UP

Type of follow-up	Date

-
- 1 On the pre-hiring process issue, see COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE, "[Application and Interpretation of Section 18.1 of the Charter of Human Rights and Freedoms](#)", Stéphanie Fournier, May 2011 (Cat. 2.128-1.6), February 2016, p. 18.
- 2 [Commission scolaire régionale de Chambly c. Bergevin](#), [1994] 2 R.C.S. 525, p. 546.
- 3 [Hydro-Québec c. Syndicat des employé-e-s des techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 \(SCFP-FTQ\)](#), 2008 CSC 43, par. 16.
- 4 [Hydro-Québec c. Syndicat des employé-e-s des techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 \(SCFP-FTQ\)](#), 2008 CSC 43, par. 15.
- 5 [Centre universitaire de santé McGill \(Hôpital général de Montréal\) c. Syndicat des employés de l'Hôpital général de Montréal](#), 2007 CSC 4, par. 25.
- 6 [Centre universitaire de santé McGill \(Hôpital général de Montréal\) c. Syndicat des employés de l'Hôpital général de Montréal](#), 2007 CSC 4, par. 25.
- 7 [Hydro-Québec c. Syndicat des employé-e-s des techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 \(SCFP-FTQ\)](#), 2008 CSC 43, par. 18-19; [Syndicat national des travailleurs des pâtes et papiers de Pont-Rouge Inc. \(C.S.D.\) c. Matériaux de construction Canada Ltée \(B.P.C.O\) division de Pont-Rouge](#), T.A. 90-00398, 1990-01-29, Décision no 90T-485.
- 8 [Centre universitaire de santé McGill \(Hôpital général de Montréal\) c. Syndicat des employés de l'Hôpital général de Montréal](#), 2007 CSC 4, par. 36.
- 9 [Hydro-Québec c. Syndicat des employé-e-s des techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 \(SCFP-FTQ\)](#), 2008 CSC 43, par. 17.
- 10 [Centre universitaire de santé McGill \(Hôpital général de Montréal\) c. Syndicat des employés de l'Hôpital général de Montréal](#), 2007 CSC 4, par. 15; [Commission scolaire régionale de Chambly c. Bergevin](#), [1994] 2 R.C.S. 525, p. 546
- 11 [Central Okanagan School District n°23, c. Renaud](#), [1992] 2 R.C.S. 970, p. 984.
- 12 The effect of an accommodation measure must sometimes be measured in terms of the autonomy of the individuals who bear part of the risk. A request will cross the threshold of undue hardship more clearly when it can be demonstrated that it has concrete effects on vulnerable individuals because they are very young, ill, suffering from a disability, or aging.
- 13 The collective agreement clauses must respect the principles set out in the Québec Charter. If the agreement has a discriminatory effect on an individual or a group of individuals, some of its rules must be given some elasticity, unless the union can show that doing so would result in undue hardship. See [McGill University Health Centre \(Montreal General Hospital\) v. Syndicat des employés de l'Hôpital général de Montréal](#), [2007] 1 S.C.R. 161, 2007 SCC 4, par. 22.
- 14 [Centre universitaire de santé McGill \(Hôpital général de Montréal\) c. Syndicat des employés de l'Hôpital général de Montréal](#), 2007 CSC 4, par. 38; [Central Okanagan School District n°23, c. Renaud](#), [1992] 2 R.C.S. 970, p. 994.
- 15 The O'Malley decision, a landmark ruling on accommodation, states that "the complainant, in the absence of some accommodating steps on his own part such as an acceptance in this case of part-time work, must either sacrifice his religious principles or his employment." [Ont. Human Rights Comm. v. Simpsons-Sears](#), [1985] 2 SCR 536, 1985, par. 23.
- 16 The union cannot claim that it is simply respecting the provisions of the collective agreement and in doing so perpetuate a discriminatory situation. See [McGill University Health Centre \(Montreal General Hospital\) v. Syndicat des employés de l'Hôpital général de Montréal](#), [2007] 1 S.C.R. 161, 2007 SCC 4, par. 21-22.