

BULLETIN

"Family status"

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I heard that there is a recent court case about discrimination against employees based on "family status." What are the issues? Why is this court case important?



HSA recently won this precedent-setting case argued in the BC Court of Appeal by HSA's legal staff on behalf of an HSA member. The case centres on the definition of "family status" under section 13 of the *BC Human Rights Code*.

This case was an appeal of an arbitration award. In that award, an employer changed the employee's work hours. As a result of the change in hours, the employee was unable to fulfill the significant child care responsibilities of caring for a child with diagnosed severe behavioural problems. The arbitration award held that the changing of the hours was not discrimination based on "family status" under the *BC Human Rights Code*. The arbitrator said that the definition of "family status" includes the relationship between parent and child, but does not include child care responsibilities. The arbitrator stated that it was the employer's right to change work schedules. HSA fundamentally disagreed with the ruling, and pursued it to the BC Court of Appeal, arguing that a parent's responsibilities to provide child care for his or her own child may fall within the protected ground of "family status."

The union's perseverance on behalf of this member is not only a significant win for this individual, but for other workers across Canada in similar situations. It is an important case because the Court of Appeal turns its attention to identifying the parameters of "family status" under section 13 of the *BC Human Rights Code*. The Court of Appeal noted that while the definition is not open-ended, it is *not* simply limited to the status of being a parent. By doing this, the Court of Appeal has clarified the definition of "family status."

The court has remitted the case back to the arbitrator, who will now have to determine whether the employer fulfilled its obligation to accommodate this employee.



Is it always discrimination based on family status if an employer does not accommodate every worker's child care responsibilities?



No. The BC Court of Appeal held that whether certain conduct does or does not amount to discrimination will depend on the facts of each case. The court held:

□a prima facie case of discrimination is made out when a change in a term of condition of employment imposed by an employer results in a serious interference with a substantial parental or other family duty or obligation of the employee. □in the vast majority of situations in which there is a conflict between a work requirement and a family obligation it would be difficult to make out a prima facie case. [Health Sciences Association v. Campbell River and North Island Transition Society, 2004 BCCA 260] 

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