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Legal Advisory Services
Canadian Human Rights Commission

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Overview

- Marital status and family status are prohibited grounds of discrimination
- Under federal jurisdiction, both grounds protect against :
 - Absolute status – discrimination resulting the fact of being married or being in a certain type of family; this includes the obligations arising out of those relationships
 - Relative status - discrimination resulting from being related to the identity of a particular person



Marital Status

- Protects against discrimination on basis of being married, not being married, living in a common-law relationship, being divorced, etc.
- “... marital status touches the individual’s freedom to live life with the mate of one’s choice in the fashion of one’s choice.”

Miron v. Trudel, [1995] S.C.J. No. 44.



Family Status

- Must consider fiduciary responsibilities and obligations arising out of marital and family relationships when considering duty to accommodate
- Distinction between ordinary responsibilities and obligations and extraordinary ones; no obligation to accommodate personal preferences
- Case law with respect to accommodating family status is not well-settled



Guidance from the B.C. Court of Appeal

- Family status is not an open-ended concept
- Discrimination may be found where the employer imposes a change in a term or condition of employment that results in a serious interference with a substantial parental or other family duty or obligation of the employee
- In most situations it will be difficult to make out a case of discrimination where there is merely a conflict between a work requirement and a family obligation.

H.S.A.B.C. v. Campbell River & North Island Transition, 2004 BCCA 260.



Application of the *Campbell River* test

- *Campbell River* decision has been applied by a number of labour arbitrators
- Interpretation of “serious interference” and “substantial parental or other family duty or obligation” has varied:
 - Refusal of request to work part-time to accommodate breastfeeding not discriminatory
 - Employer`s refusal to consider employee`s application for position in another city when employee refused to move due to family obligations (shared custody, care-giving of elderly parent and common-law spouse unable to move) not discriminatory.
 - Termination for failure to be reasonably available for work discriminatory where employee refused majority of assignments over 6-month period due to child-care and employer did not attempt accommodation.



Criticism of the *Campbell River* test

- *Campbell River* decision has not been followed in federal jurisdiction
- Inconsistent with broad, liberal approach to human rights
- Restrictive interpretation collapses the traditional two-part test for discrimination
- Balancing of degree of interference and nature of parental or other family duty should be done at accommodation stage



Developments in federal jurisdiction

- Do not have to show a 'serious interference' with one's protected interests or suffer a particular degree or level of discrimination to gain protection of *CHRA*
- Limiting 'family status' discrimination to situations in which the employer has changed a term or condition of employment is unduly restrictive since the relevant change typically arises within the family and not in the workplace (*e.g.*, the birth of a child, a family illness)
- Concerns about workplace disruption and "great mischief" should be considered as part of the duty to accommodate, especially undue hardship
- Undue hardship in family status situations must be demonstrated
Hoyt v. Canadian National Railway, 2006 CHRT 33.
Johnstone v. Canada (Attorney General), 2007 FC 36 (aff'd by CA).