

Ruling expands family rights ^[1]

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EXCERPTS

A recent decision by the Canadian Human Rights Tribunal dramatically expanded employers' obligations to staff with children, and the impact could be far-reaching.

Fiona Johnstone and her husband were border services officers at Pearson International Airport in Toronto. Her job processing goods and travellers entering Canada was part of a 24-hour operation, with irregular rotating shifts and six different start times.

In 2002, back from maternity leave, Johnstone asked for a set three-day-a-week, 13-hour day to maintain full-time status, with its pension and benefits. There were, she said, only three days in which her relatives would care for her child. She testified that no alternative child care arrangement was possible because her hours were unpredictable.

The employer offered her a part-time shift of three, 10-hour shifts and four hours on a fourth day. Because it would not be cost-effective to arrange for care for the four-hour shift, she accepted three set 10-hour days. When her second child was born two years later, she began working even fewer hours, although she testified if her request had been granted for the same three days each week, she would have worked full-time hours.

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The adjudicator awarded her full salary and benefits for the three years of unpaid leave and for the three years she worked part-time she was paid the difference between her full- and part-time salary, an additional \$15,000 for pain and suffering due to alleged injury to her reputation and confidence, and \$20,000 for her employer's "wilful and reckless conduct."

The employer was ordered to consult with the Human Rights Commission to develop a plan to avoid family status discrimination in the future and to establish written policies for all of its workforce, within six months, that are satisfactory to the Commission and to Johnstone. The impact this decision will have for all employers, over time, if it is not overturned on appeal, will almost assuredly be an increased demand among parents to work from home, a practice from which most employers derive little benefit; and as parents use this decision to secure desirable shifts, there will be a backlash from employees without children, who find themselves increasingly relegated to less desirable working hours.

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