

# Attorney General of Canada vs. Fiona Ann Johnstone: Reasons for judgment and judgment <sup>[1]</sup>

**Author:** Federal Court of Canada

**Source:** Federal Court of Canada

**Format:** Report

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## AVAILABILITY

Document in pdf <sup>[2]</sup>

### Excerpts:

[1] This is an application for judicial review of the Canadian Human Rights Tribunal August 6, 2010 decision allowing Ms. Fiona Johnstone's complaint of human rights discrimination, because of family status, by the employer.

[2] Ms. Johnstone filed her complaint under the provisions of the Canadian Human Rights Act RSC 1985 c H-6 [the Act] which prohibits discrimination on the basis of family status in matters relating to employment. She contended that her employer, the Canadian Border Services Agency [CBSA], engaged in a discriminatory employment practice with respect to family status, specifically, in relation to her parental childcare obligations.

[3] Ms. Johnstone had been working as a border services officer on rotating shifts. She requested full-time employment working fixed day shifts that would allow her to arrange childcare for her young children. CBSA policy limited fixed day shifts as requested by Ms. Johnstone to part-time employment. Consequently, Ms. Johnstone was not eligible for benefits available to full time CBSA employees.

[4] The Tribunal found Ms. Johnstone had proven prima facie employment discrimination on the basis of family status contrary to the Act and decided the CBSA had not proven hardship for the employer necessary to exempt the CBSA from its obligation to accommodate for family status.

[5] The Applicant contests whether the term "family status" in the Act includes parental childcare obligations. It submits childcare is not included in the term "family status". The Applicant also challenges the Tribunal's legal test for finding prima facie discrimination based on family status. Finally, the Applicant contests several remedial orders of the Tribunal.

[6] On the central questions, I conclude the Tribunal reasonably found parental childcare obligations comes within the scope and meaning of "family status" in the Act. I also conclude the Tribunal applied the proper legal test for its finding of prima facie discrimination on the basis of family status. Finally, I am satisfied the Tribunal finding that the CBSA discriminated against Ms. Johnstone on the basis of family status to be reasonable having regard to the evidence before the Tribunal.

[7] On the question of remedies, while I conclude the Tribunal did not err generally, I find the Tribunal erred in part by failing to justify the compensation award for the period when Ms. Johnstone elected unpaid leave to accompany her spouse on relocation to Ottawa.

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### THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed subject to the exceptions that follow.
2. The Tribunal's award of full-time wages and benefits for the period from August 2007 to August 2008 when Ms. Johnstone opted for unpaid leave provisions under VSSA to accompany her spouse to Ottawa is referred back to the Tribunal for reconsideration.
3. The portion of the Tribunal Order that includes Ms. Johnstone as a party to be consulted in the development of written remedial policies is struck.
4. Costs are awarded to the Respondent Johnstone.

**Related link:** Federal court rules employers must accommodate workers' child-care needs <sup>[3]</sup>

**Region:** Canada <sup>[4]</sup>

Source URL (modified on 27 Jan 2022): <https://childcarecanada.org/documents/research-policy-practice/13/02/attorney-general-canada-vs-fiona-ann-johnstone-reasons>

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