

# Ottawa should end court fight against working families <sup>[1]</sup>

Editorial

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## EXCERPTS

After a well-deserved string of legal defeats federal authorities should stop trying to reverse a ruling that favours Canadian families. It's a matter of basic human rights.

The latest setback in Ottawa's fight for injustice came last week when the Federal Court of Appeal upheld a previous decision that said Canadian employers must try to accommodate parents struggling to meet child-care needs.

One would think the wisdom of that policy would be obvious - not only to provide fairness to families but because measures enabling effective child-care keep people in the workforce and make sound economic sense.

Evidently that's not reason enough for federal authorities who have been blindly fighting change for the better in a case that dates back to 2004.

Customs inspector Fiona Johnstone and her husband were both working full-time at Pearson International Airport on irregular, constantly rotating shifts. When her son, Ethan, was born, Johnstone found it impossible to obtain child care that fit this mixed-up schedule. But when she asked to work a fixed shift she was told only part-timers could do so, despite the fact that others in her workplace were given full-time fixed shifts for medical or religious reasons.

For the sake of her infant, Johnstone accepted part-time status but filed a complaint to the Canadian Human Rights Tribunal. On pondering the evidence, this panel held that the Canada Border Services Agency had failed in its obligation to provide reasonable accommodation that would allow Johnstone to meet her child care needs.

The border agency had argued there was no legal right to such accommodation because child care responsibilities are the result of a personal choice - that of becoming a parent. Human rights legislation, however, protects Canadians from discrimination on the basis of "family status" and Johnstone was deemed to be covered by that. The agency was ordered to pay the difference between Johnstone's full-time and part-time wages, for a set period, plus \$20,000 in special damages.

The case should have gone no further than this clear and fair ruling. But government officials stubbornly sought a reversal in federal court. That effort was quashed last year when Federal Court Justice Leonard Mandamin reaffirmed the human rights tribunal's decision.

Still unwilling to see the light, Ottawa took its case to the Federal Court of Appeal, where a three-member panel unanimously agreed last week that Canada Border Services had indeed discriminated against Johnstone.

Ottawa has 60 days to seek an appeal of this decision before the Supreme Court of Canada. It would be, frankly, absurd to continue. But federal officials insist on keeping their options open. The Star's Laurie Monsebraaten quoted a spokeswoman saying the government is conducting a review that "will determine the appropriate course of action within the prescribed timelines."

What's there to review here? Ottawa has unrelentingly pursued an unfair and regressive approach to employment policy and has lost at every turn. There should not be an appeal to the Supreme Court. If anything, federal officials owe Johnstone an apology for fighting so long - and being so wrong - on how working families should be treated.

- reprinted from the Toronto Star

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