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LAWYERS

Family Status and Child Care Obligations

By: D. Kevin Davis



Following the recent release of the Federal Court of Appeal (FCA) decisions in *Canada v. Johnstone* and *CNR v. Seeley*, many employers believe they must now comply with any request for a change in work schedule required to accommodate an employee's day care arrangements. The issue of course is not that simple.

These decisions are binding only on federally regulated employers such as banks and railways. Most businesses in Brantford are provincially regulated and therefore these decisions do not directly apply to most local employers. However, the decisions will have a "persuasive impact" upon any tribunal or court asked to apply the protected area of "family status" under the Ontario Human Rights Code.

In the *Johnstone* case, the complainant was a customs officer employed by the Canada Border Services Agency (CBSA). Customs officers work rotating shifts, with each cycle lasting 56 days. Employees are given 15 days' notice of each new schedule. Ms. Johnstone asked to work a fixed three day week schedule of 13 hours each day, as it was virtually impossible for her to make day care arrangements under the rotating shift cycle. Following its policy manual CBSA refused her request unless she agreed to change her status to a part time employee working no more than 34 hours per week.

The FCA ruled in her favour stating that human rights laws protects an employee's *essential child care needs*, but not parental *preferences* such as extracurricular activities. The FCA ruled that to obtain the protection an employee will have to demonstrate that they sought out reasonable alternate childcare arrangements unsuccessfully. The employer is then required to accommodate the request unless it will cause undue hardship to the employer.

What does this mean for employers? Some practical tips are:

1. **Treat seriously any request.** Inquire about the employee's child care obligations and make a good faith effort to adjust their work schedule to accommodate the day care arrangements.
2. **Insist on proof from the employee** that they have exhausted all reasonable options to reconcile work and child care obligations.
3. **Update policy manual** by establishing policies and procedure for dealing with these requests.

At Waterous Holden Amey Hitchon LLP we have several partners and associates who can assist you with your company's employment needs. You can reach Kevin Davis at (519) 751-6405 if you require his assistance.