

# MARITAL AND FAMILY STATUS DISCRIMINATION: A NEW DEFINITION



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Alberta employers are undoubtedly aware that they are prohibited under the Human Rights, Citizenship and Multiculturalism Act from discriminating against employees or potential employees on the basis of “marital status” or “family status”. What may not be understood, however, is exactly what those terms mean. Indeed, until now there has been a great deal of disagreement in the case law as to whether prohibited marital and/or family status discrimination includes only discrimination that is directed at an individual’s membership in a particular *group* such as “married” or “single” (his or her “absolute status”), or whether it also includes discrimination based on the fact that the individual is married or related to a *particular person* (his or her “relative status”). In the just released decision of B v. Ontario (Human Rights Commission) the Supreme Court of Canada has clarified the law on this issue. Our highest court has held that not only absolute status discrimination but also relative status discrimination is prohibited.

In B. v. Ontario, Mr. A had worked for the respondent company faithfully for 26 years and was, at the time of his termination, only four years away from retirement with a full pension. The two owners of the company, Mr. B and Mr. C, were the brothers of Mr. A’s wife and the uncles of Mr. A’s daughter. Mr. A was fired by Mr. B after Mr. A’s daughter alleged Mr. B had sexually molested her as a child.

When Mr. A’s wife and daughter confronted Mr. B with the allegations at the latter’s home, Mr. A stayed in the car and did not involve himself. Also, when Mr. B came to Mr. A’s house later that evening Mr. A refused to talk to him about the matter. Despite the fact that Mr. A apparently intended to stay out of the situation, when Mr. A went to work the following Monday he was summarily terminated by Mr. B. Mr. A subsequently filed a complaint with the Ontario Human Rights Commission.

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The Commission found there had been no evidence in front of the employer (at least as of yet) that the situation would preclude Mr. A from properly carrying out his duties. Accordingly, Mr. A had been terminated solely because his daughter had made allegations against Mr. B and his wife had supported them. This, the Commission stated, constituted discrimination against Mr. A on the basis of whom he was related and married to and, therefore, on the basis of his family and marital status.

Upon judicial review the Ontario Divisional Court disagreed. Both Justices Spence and Dunnet reviewed the case law interpreting the equality provisions of the *Charter* and, by analogy, found that the purpose of human rights legislation is to protect individuals situated in disadvantaged and stereotyped *groups*. Mr. A had not been terminated because of his membership in such a group or, indeed, in any group at all. Rather, he had been terminated because he was married and related to *particular people*. This, according to the Divisional Court, was not prohibited by the legislation.

The Ontario Court of Appeal overturned the Divisional Court's decision and the matter eventually went before the Supreme Court of Canada. Writing for the majority Justices Iacobucci and Bastarache agreed with the Commission's original decision and that of the Court of Appeal. Specifically, the Supreme Court held that discrimination on the grounds of marital status and/or family status under Ontario human rights legislation included discrimination on the basis of just whom a person is specifically married or otherwise related to. While it is true that discrimination based on membership in an identifiable group is also prohibited, an identifiable group is not required. Human rights legislation is intended to protect the *individual* against stereotypical assumptions. Here it had been assumed that Mr. A would not be able to properly perform his duties because he was married to his wife and related to his daughter. Without proof that that assumption was correct Mr. A's termination constituted discrimination prohibited under the Ontario Human Rights Code.

The wording of the relevant provision in the Alberta Human Rights, Citizenship and Multiculturalism Act is largely the same as that found in Ontario. Accordingly, the Supreme Court case B v. Ontario will govern future human rights decisions on marital and family status grounds in this province. This means that employers cannot make decisions that discriminate against employees or potential employees on the basis of whom he or she is related to. For example, an employer cannot fire an employee solely because her spouse has been criminally convicted. Or, to give another example, an employer cannot refuse to hire a potential employee because his son previously vandalized the employer's property. Rather, there must be some evidence that the employee or potential employee's own conduct or interest is in conflict with the needs of the employer.

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