

Case In Point

Federal Court Confirms “Family Status” Applies to Mother-in-Law

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In [*Canada \(Attorney-General\) v. Hicks*](#), the Federal Court held that the Canadian Human Rights Tribunal (“CHRT”) did not err when it found that Human Resources and Services Development Canada (“HRSDC”) discriminated against Mr. Hicks in refusing to approve expenses associated with maintaining temporary dual residences after a relocation from Halifax to Ottawa. After Mr. Hicks relocated, his wife remained in Halifax for a period of approximately one year to care for her ailing mother who lived in a nursing home. HRSDC denied his request for reimbursement of expenses. The policy regarding temporary dual residence required that a dependant reside in the home for which the expenses were being sought. As the mother-in-law did not reside in the home in Halifax, the expenses were not approved.

The Federal Court decisively confirmed that the protected ground of “family status” includes eldercare obligations. The Court likened eldercare to childcare in that non-fulfillment can attract both civil and criminal responsibility if not exercised properly.

Perhaps more concerning is that this decision confirms that discrimination may be found even where the employee does not incur a conflict between work and family status obligations. Indeed, the Federal Court upheld a finding by the CHRT that the benefit at issue was “under-inclusive” in failing to provide expense reimbursement for maintaining temporary dual residences for dependants who reside outside of the home. In particular, the Court accepted that discrimination can be found where benefits offered to employees will differ based on a protected ground.

Given this finding, it is worthwhile for all employers to consider whether the benefits they offer to employees could be at risk of being found to be under-inclusive as a result of making a distinction based on criteria which could relate to any protected ground.