

Case In Point

Appeal Court Upholds \$20,000 Damages Award for Discrimination on the Basis of Family Status

Date: December 8, 2015

In this latest decision which considers discrimination on the basis of family status due to childcare issues, the Court of Appeal for Ontario upheld a trial judge's finding that an appellant employer breached both the *Employment Standards Act, 2000* ("ESA") and the *Human Rights Code* ("Code") when it terminated the employment of the respondent employee one week after she returned from her second maternity leave.

In [Partridge v. Botony Dental Corporation](#), the Court of Appeal deferred to the findings of the trial judge who concluded that the appellant employer changed the respondent's working hours, knowing they would conflict with her childcare obligations, when the respondent asserted her right under the ESA to be returned to her pre-maternity leave position as an Office Manager. The appellant then terminated her employment on unfounded allegations of cause. In addition to the finding of wrongful dismissal, the trial judge held there had been reprisal under the ESA and discrimination on the basis of family status. The Court of Appeal noted the trial judge's finding that the appellant committed "multiple and deliberate breaches of its obligations towards the Respondent under the *Employment Standards Act, 2000*."

On the issue of family status and childcare obligations, the Court rejected the appellant employer's assertion that the respondent could make alternative, sustainable childcare arrangements, stating:

[20] Whether the framework under *Johnstone v. Canada (Border Services)*, 2014 FCA 110 (CanLII), 372 D.L.R. (4th) 730 or *SMS Equipment Inc. v. Communications, Energy and Paperworkers Union, Local 707*, 2015 ABQB 162 (CanLII), [2015] 8 W.W.R. 779 is applied, the result flowing from the trial judge's very specific, fact-driven analysis, required under both decisions, is the same.

The Court upheld the trial judge's award of twelve months' notice as well as \$20,000 in compensatory damages under the Code.

This decision serves as a stark reminder to employers that an employee's childcare obligations may give rise to an issue of accommodation on the basis of family status and that any requests must be examined carefully and on a case-by-case basis.