

**THE ONTARIO HUMAN RIGHTS CODE'S MARITAL AND FAMILY STATUS PROTECTIONS RELATE NOT ONLY TO BEING PART OF A GENERAL GROUP OF MARRIED PERSONS OR FAMILY MEMBERS, BUT ALSO EXTEND TO THE INDIVIDUAL IDENTITY OF ONE'S SPOUSE OR FAMILY MEMBERS**

*B. v. Ontario Human Rights Commission*, unreported, dated November 14, 2000 (Ont. C.A., Docket: C32910)

*Now you can be discriminated against not only because you are married (e.g., "no married women as test pilots"), but also because your spouse is a particular individual (e.g. "you're fired because your husband, Joe Smith, crashed the jet")*

**Facts**

Since 1974, A had worked for his wife's brothers, B and C, the owners of D Company. In September 1990, A's daughter (and his wife) accused B, her uncle, of sexually assaulting the daughter when she was a child.

The next working day, B fired A. A complained to the Ontario Human Rights Commission that his termination constituted discrimination on the grounds of family status and marital status.

**The Board Of Inquiry**

B, the employer / uncle, argued that A, the employee / father / husband, was not terminated because of the sexual abuse allegation, but because he felt that A would be unable to continue to work for someone whom he thought had molested his daughter. B claimed that since the termination decision was based on a personal assessment unrelated to family or marital status, no discrimination had taken place.

The Board of Inquiry disagreed. The Board concluded that the "sole reason" for A's termination was the fact that his daughter had raised the allegations against B and found that there was no basis for B's "loyalty" concerns at the time of A's termination. As a result, the Board held that A's dismissal was **discriminatory because A had not been treated on his own merits in all aspects of his employment, but had been treated in a certain way because of his relationship with his daughter (i.e. family status) and/or his wife (i.e. marital status).**

**Ontario Divisional Court**

B appealed the Board of Inquiry's decision to the Ontario Divisional Court. Writing for the Court's majority, Dunnet J. held that the adverse conduct directed at A flowed not from his "group membership" (i.e. being part of a general group of married persons or family members), but from the personal animosity he attracted because he was the husband and father of his employer's accusers.

Dunnet J. reasoned that A was beyond the protected scope of anti-discrimination measures since differential treatment based on the particular identity of one's spouse or child does not fall within the definition of family or marital status for the purposes of the *Code*. Dunnet J. stated:

The fact of being denied employment by reason of having a child is not akin to being dismissed for being the parent of a particular child. The former is based on the stereotypical assumption that people with children are unable or unwilling to devote time to their employment within the company. The latter is based on personal animosity. In concurring reasons, Spence J. also upheld B's appeal.

### **Ontario Court Of Appeal**

The Human Rights Commission appealed the Divisional Court's decision to the Ontario Court of Appeal, arguing that the identity of a particular spouse or family member was included in the definition of marital and family status for the purposes of the *Code*.

Abella J.A., writing for the Court, allowed the appeal and found that marital and family status related not only to being part of a general group of married persons or family members, but also extended to the individual identity of one's spouse or family members. Abella J.A. stated:

The concept of marital status includes not only the fact of being married or unmarried, but also the identity of the spouse. Similarly, family status relates not only to one's family constellation, but to the identity of the other members.

Abella J.A. found that B's conduct amounted to discrimination in this case, concluding:

It was not merely the employer's personal animosity that resulted in the dismissal, it was animosity based on the identity and conduct of the employee's spouse and daughter. Marital and family status, therefore, are clearly engaged in this case and engaged in a way that resulted in discrimination to the father.

Abella J.A. held that since A's dismissal was based on his *presumed* inability, as a husband and father, to be a good employee given the accusations made by his wife and daughter -- rather than on his actual merit or conduct -- the dismissal contravened the *Code*.

### **Supreme Court Of Canada ?**

The *Law Times* dated November 27, 2000, suggests that this decision may well be appealed to the Supreme Court of Canada by Mr. B.