Federal Court  Cour fédérale

**Date: 20111201**

**Docket: T-569-11**

**Citation: 2011 FC 1398**

**Ottawa, Ontario, December 1, 2011**

**PRESENT: The Honourable Madam Justice Snider**

**BETWEEN:**

**TRACEY PATTERSON**

**Applicant**

**and**

**CANADA REVENUE AGENCY**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

## I. Introduction

[1] The Applicant, Ms. Tracey Patterson, has been employed by the Respondent, Canada Revenue Agency (CRA or the Agency) since 1989. On November 12, 2010, she applied for two different positions within CRA. Each of the positions required that the Applicant demonstrate experience of not less than 24 months within the past five years. In each case, the Applicant was screened out of the competition because she failed to meet the minimum experience requirement for the job. In assessing her experience, the CRA accommodated her two maternity leaves as

"experience" but excluded her more than three years of Leave without Pay for Family-Related Needs (Family Leave). In this application for judicial review, the Applicant seeks to overturn the two screening decisions.

[2] The Applicant filed two applications for judicial review (Court File No. T-569-11 and T-570-11). By Order dated April 11, 2011, the two applications were consolidated.

## II. Issue

[3] The key issue that arises on this judicial review is the following:

> Did the CRA err in failing to treat the Applicant's Family Leave in the same manner as her maternity leave, i.e. as a leave protected under the *Canadian Human Rights Act*, RSC, 1985, c H-6 [*CHRA* or *Act*]. In different words, did the CRA's requirement of "recent and significant experience" deprive the Applicant of an employment opportunity on the basis of her family status or her sex?

[4] For the reasons that follow, I have determined that this application for judicial review should succeed.

## III. Background

[5] As noted above, the Applicant was unsuccessful in two different job competitions; these competitions were referred to as Selection Process 2010-9708-ONT-1263-3154 (MG-05 position) and 2010-9651-ONT-1263-3137 (SP-08 position). Although the job functions were different for each position, both competitions required "recent and significant experience" defined as:

> [T]he depth and breadth of experience that would normally be associated with performance of these functions as a major job function for a period of time not less than 24 months within the past 5 years.

[6] The Applicant, pursuant to the Collective Agreement, had taken maternity leave from May 4, 2005 to May 3, 2006 and then Family Leave from May 2006 to October 2009. These absences meant that, in the five years leading up to the competitions (November 2005 to November 2010), she did not meet the 24-month experience requirement.

[7] In e-mails dated November 25, 2010, for the MG-05 position, and December 22, 2010, the Applicant was informed that she would not be considered further in the selection process for each position on the basis that she did not meet the experience requirement. In other words, the Applicant was screened out of both competitions before any other qualifications were assessed.

[8] The CRA, as a separate employer within the public service, has established a number of unique policies and directives. One of those – the "Directive on Recourse for Assessment and Staffing – January 31, 2008" (Staffing Directive) – establishes that the only recourse available to

CRA employees whose applications are rejected at the screening, or Pre-requisite Stage, is to request Individual Feedback.

[9] Individual Feedback involves a discussion between the candidate/employee and the person authorized to conduct the selection process. Individual Feedback allows a candidate/employee to raise concerns regarding her assessment or treatment in the internal selection process, and should provide the candidate with information useful to her career development (Staffing Directive, at 2).

[10] The sole ground for recourse during Individual Feedback is "whether the employee … was treated in an arbitrary way". "Arbitrary" is defined as:

> In an unreasonable manner, done capriciously; not done or acting according to reason or judgment; not based on rationale or established policy; not the result of a reasoning applied to relevant considerations; discriminatory, i.e., as listed as the prohibited grounds of discrimination in the *Canadian Human Rights Act*.

[11] In this case, the Applicant sought an Individual Feedback session with respect to each of the positions for which she was screened out. In two separate decisions, the screening decision was maintained. The details of the process leading to the Feedback Session and the results are set out below for each competition.

A. *MG-05*

[12] In respect of the MG-05 position, the Applicant was asked to provide more information on her leave periods. After receiving this information, on November 18, 2010, a member of the

Selection Board for the MG-05 competition contacted CRA's Resourcing Centre of Expertise for the Ontario Region (CoE) to seek the following advice:

> My understanding is that since [the Applicant] had approved leave, I should ignore 4 years from May 4, 2005 to October 13, 2009 [the Family Leave] as well as June 16, 2003 to October 12, 2004 [Maternity and sick leave] and extend her experience back to 2002 to compensate for this leave. Is this correct?

[13] The e-mail response from the CoE was as follows:

> Since maternity leave is protected under the Canadian Human Rights Act, it cannot be treated the same way as other leave when considering whether a candidate meets the experience requirement. Managers/Boards have to disregard the period of maternity leave and consider an alternate method to determine if the candidate meets the experience. However, this does not apply to Care and Nurturing leave. So I would consider this candidate's 24 months of cumulative experience from 2003 onwards.

[14] On November 25, 2010, the Applicant was advised that she did not meet the experience prerequisites and that her application would not be considered further.

[15] The Applicant made a request for Individual Feedback on December 1, 2010. On December 3, 2010, an Individual Feedback session was held with the Applicant. In the Individual Feedback Summary, dated December 3, 2010, the following statements were made:

> Kandy explained to Tracey that she had been screened out of the process because she did not meet the experience criteria of this process. She further explained that the Board had extended the 5 year period, in which she had to demonstrate the prerequisite experience, for an additional year to account for the one year of maternity leave taken by Tracey in 2003/2004 to 6 years.
>
> Tracey asked about her Care and [Nurturing] leave and Kandy said that HR had advised us that the Board could only make accommodation for maternity leave in keeping with CRA practices regarding maternity leave.

[16] In reviewing the notes from the Individual Feedback session together with the e-mail from the CoE, it is clear that the decision was made to exclude the Applicant from the competition because she did not meet the experience requirement. The reasons for this conclusion, as stated in the e-mail from the CoE is that, while the CRA accommodated the period of her maternity leave, no accommodation was made or credit given for her Family Leave on the basis that Family Leave is not protected under the *CHRA*. The completion of the Individual Feedback Summary made the decision to screen the Applicant out of the process final and triggered the Applicant's right to bring this judicial review.

B. *SP-08*

[17] The process for the SP-08 position was very similar. However, in this case, the Applicant actually was allowed to sit the exam – which she passed – apparently before the "problem" with her experience was discovered. On November 18, 2010, a member of the Selection Board for the SP-08 competition contacted the CoE to seek the following advice:

> The candidate returned to work in 2009 after taking extended leave (maternity and parental) and as a result has less than 24 months experience within the last five years.
>
> What should we do in this scenario?

[18] The e-mail response from the CoE was as follows:

> Since maternity leave is protected under the Canadian Human Rights Act, it cannot be treated the same way as other leave when considering whether a candidate meets the experience requirement. Managers/Boards have to disregard the period of maternity leave and consider an alternate method to determine if the candidate meets the experience. In this case, you can consider 24 months of experience within the past 6 years.

[19] In an e-mail dated December 22, 2010, the Applicant was advised that she did not meet the experience prerequisites and that her application would not be considered further.

[20] The Applicant made a request for Individual Feedback on December 22, 2010. On January 19, 2011, an Individual Feedback session was held with the Applicant. In the Individual Feedback Summary, dated January 19, 2011, the following statements were made:

> She wanted to know why she was allowed to write the exam even though she did not qualify[.]
>
> We explained to her that we were working with very tight deadlines. We gave her the benefit to write the exam, while we verif[ied] her experience.

[21] In reviewing the notes from the Individual Feedback session together with the e-mail from the CoE, it is clear that the decision was made to exclude the Applicant from the competition because she did not meet the experience requirement. The reasons for this conclusion, as stated in the e-mail from the CoE is that, while the CRA accommodated the period of her maternity leave, no accommodation was made or credit given for her Family Leave on the basis that Family Leave is not protected under the *CHRA*. The completion of the Individual Feedback Summary made the decision to screen the Applicant out of the process final and triggered her right to bring this judicial review.

## IV. Statutory Scheme

[22] The question before me involves the application of certain provisions of the *CHRA*. The full text of the relevant provisions is included in the Appendix to these reasons.

[23] Simply stated, s. 7(b) of the *Act* makes it a discriminatory practice to differentiate adversely between individuals in employment on the basis of a prohibited ground of discrimination. Section 10(a) of the *Act* makes it a discriminatory practice to establish or pursue policies or practices that deprive or tend to deprive an individual or class of individuals of employment opportunities on the basis of a prohibited ground.

[24] Section 3 of the CHRA establishes the prohibited grounds of discrimination as race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

[25] Pursuant to s. 15, a *bona fide* occupational requirement may be considered not to be discriminatory if it is established that "accommodation of the needs of an individual . . . affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost".

## V. Standard of Review

[26] The parties disagree on the standard of review to be applied to this judicial review. The Applicant asserts that the standard of review is correctness, while the Respondent submits that the decision should be reviewed on a standard of reasonableness.

[27] The CRA's submissions on the standard of review are premised on its view that the issue before the staffing officers was merely whether or not the Applicant met the prerequisites for the two CRA positions. This is a question of fact, in the CRA's view, that should be reviewed on a standard of reasonableness, as it was in *Anderson v Canada (Customs and Revenue Agency)*, 2003 FCT 667, 234 FTR 227, aff'd 2004 FCA 126, 129 ACWS (3d) 1140 [*Anderson*], and in *Tran v Canada (Revenue Agency)*, 2011 FC 1010, [2011] FCJ No 1236 [*Tran*].

[28] The problem with the CRA's position is that it mischaracterizes the issue before the Court in this judicial review. In both *Anderson* and *Tran*, the Court was dealing with questions of fact – specifically, whether the applicants' alleged experience fulfilled the requirements set out in the job competitions. The disputes centred on the qualitative assessment of the prior experience. That is not the issue before me.

[29] In this case, the Applicant's rights depend on the resolution of a question of law, namely whether Family Leave is protected under the *Act* in the same way as maternity leave. In my view, this is a pure question of law which requires the interpretation of provisions of the *Act*. As

has recently been stated by the Supreme Court of Canada in *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2011 SCC 53 at para 22, [2011] SCJ No 53:

> [G]eneral questions of law that are both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise, must still be reviewed on a standard of correctness, in order to safeguard a basic consistency in the fundamental legal order of our country.

[30] Interpretation of provisions of the *CHRA* that affect all of the Canadian work force is surely of central importance to the legal system. Moreover, a human resources specialist in the CRA is not acting within his or her specialized area of expertise when she interprets and applies the *Act*.

[31] I will apply a correctness standard of review.

## VI. Family Status

[32] The first ground upon which the Applicant claims discrimination is that of "family status". The question is whether the Applicant has shown that she suffered discrimination on the basis of her family status.

[33] As noted above, the Applicant had taken three years and four months of Family Leave to care for her pre-school child. Under the relevant terms of the collective agreement, an employee "may be granted" up to five years of leave without pay for "the personal long-term care of the employee's family". This type of leave was, at one time, referred to as "Care and Nurturing leave". In some of the documents included in the materials before me, that term is still used. As

far as I can tell, there is no difference between the two types of leave insofar as this application for judicial review is concerned.

[34] While "family status" is not defined in the *Act*, I am of the view that the circumstances of a parent who cares for children (or other family members) must be included in the term "family status". It is only because of the Applicant's position as a parent that she was able to take Family Leave. While there is little jurisprudence from the Courts on this point, consistent decisions of labour arbitrators have concluded that, under the *Act*, the concept of "family status" encompasses family and parental obligations, including childcare (see, for example, *Rajotte v Canada Border Services Agency*, 2009 PSST 25 at para 27, 2009 LNCPSST 25; *Johnstone v Canada Border Services*, 2010 CHRT 20 at paras 211, 234, [2010] CHRD No 20). While I am obviously not bound by those decisions, they present a substantial body of quasi-judicial determinations to support the Applicant's submission. Moreover, the CRA failed to put forward even a single case that differed on its interpretation of the scope of "family status".

[35] From this review, I conclude that "family status" includes the obligations of one family member to care for other members of the family.

[36] The issue in this case is whether there is indirect, or adverse effect discrimination. This is because CRA's requirement of "recent and significant experience" is neutral on its face in that it does not distinguish between men and women, or individuals with families and individuals without families. However, the policy allegedly has an adverse effect on employees who have families and on women. *Ont Human Rights Comm v Simpsons-Sears*, [1985] 2 SCR 536,

23 DLR (4th) 321 [*O'Malley*] is the seminal case on the distinction between direct discrimination and adverse effect or constructive discrimination. The majority described the distinction at paragraph 18:

> A distinction must be made between what I would describe as direct discrimination and the concept already referred to as adverse effect discrimination in connection with employment. Direct discrimination occurs in this connection where an employer adopts a practice or rule which on its face discriminates on a prohibited ground. For example, "No Catholics or no women or no blacks employed here." [….] On the other hand, there is the concept of adverse effect discrimination. It arises where an employer for genuine business reasons adopts a rule or standard which is on its face neutral, and which will apply equally to all employees, but which has a discriminatory effect upon a prohibited ground on one employee or group of employees in that it imposes, because of some special characteristic of the employee or group, obligations, penalties, or restrictive conditions not imposed on other members of the work force. [….] An employment rule honestly made for sound economic or business reasons, equally applicable to all to whom it is intended to apply, may yet be discriminatory if it affects a person or group of persons differently from others to whom it may apply.
>
> [Emphasis added]

[37] The onus is on a complainant to establish a *prima facie* case of discrimination. A *prima facie* case of discrimination is one that covers the allegations made and which, if believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent (*O'Malley*, above at para 28). In *Morris v Canada (Canadian Armed Forces)*, 2005 FCA 154 at para 27, 334 NR 316 [*Morris*], the Court of Appeal held that the legal definition of a *prima facie* case does not require that any particular type of evidence be adduced

to prove the facts necessary to establish that the complainant was the victim of a discriminatory practice as defined in the *Act*. In that case, the Court of Appeal explained at paragraph 27 that,

> Paragraph 7(*b*) requires only that a person was differentiated adversely on a prohibited ground in the course of employment. It is a question of mixed fact and law whether the evidence adduced in any given case is sufficient to prove adverse differentiation on a prohibited ground, if believed and not satisfactorily explained by the respondent.
>
> [Emphasis added]

[38] Once a complainant has established a *prima facie* case, the burden shifts to the respondent to provide a reasonable explanation for the conduct in issue (*British Columbia (Public Service Employee Relations Commission) v BCGSEU*, [1999] 3 SCR 3 at para 19, [1999] SCJ No 46).

[39] Has the Applicant established a *prima facie* case of discrimination based on her family status? I believe that she has. Because the Applicant took three years and four months of Family Leave, she was unable to meet the experience requirements of the MG-05 and SP-08 positions. Stated differently, she was denied an employment opportunity because she took leave to care for her family. The Applicant has shown that the effect of the CRA's policy or practice is "to withhold or limit access to opportunities, benefits, or advantages to one group that are made available to another" (*Canada (Attorney General) v Walden*, 2010 FC 490 at para 131, 368 FTR 85).

[40] In response, the CRA argues that the collective agreement provides differently for maternity leave than for Family Leave. I agree that there are different contractual provisions for the two leaves. That, however, does not change the fundamental character of both leaves as being related to family status. Moreover, I am unaware of any jurisprudence that has permitted an employer to contract out of a duty as fundamental as the prohibition on discrimination imposed by the *CHRA*. As noted by Justice Deschamps in *McGill University Health Centre (Montreal General Hospital) v Syndicat des employés de l'Hôpital général de Montréal*, 2007 SCC 4 at para 21, [2007] 1 SCR 161, "[i]t has long been recognized that the parties to a contract cannot agree to limit a person's fundamental rights".

[41] The CRA, as acknowledged in the e-mails cited above, accepts that maternity leave is "protected" under the *Act*. Pursuant to s. 3(2) of the *CHRA*, discrimination on the basis of pregnancy or child-birth is deemed to be discrimination on the ground of sex. Beyond the Collective Agreement, the CRA provides no argument as to why Family Leave should not also be protected. In my view, there is no principled reason why Family Leave should be any differently treated under the *CHRA* than maternity leave.

[42] The decision of Justice Barnes in *Johnstone v Canada (Attorney General)*, 2007 FC 36, 306 FTR 271, aff'd 2008 FCA 101, 164 ACWS (3d) 838 [*Johnstone*] is relevant in this regard. That case arose out of the Canada Border Services Agency's (CBSA) requirement that the applicant accept part-time employment in return for obtaining fixed shifts to accommodate her childcare responsibilities. The applicant sought judicial review of the decision of the Canadian Human Rights Commission (Commission) dismissing her complaint. In rejecting the notion that

a different test applies for finding *prima facie* discrimination on the basis of family status, as opposed to the other grounds of discrimination, Justice Barnes observed at para 29 that,

> While family status cases can raise unique problems that may not arise in other human rights contexts, there is no obvious justification for relegating this type of discrimination to a secondary or less compelling status: *see ONA v. Orillia Soldiers Memorial Hospital* (1999), 169 D.L.R. (4th) 489, 42 O.R. (3d) 692, [1999] O.J. No. 44 (C.A.) at para. 44 and *British Columbia v. BCGSEU*, above, at paras. 45 and 46.

[43] The Court of Appeal declined to comment on the correct legal test for finding *prima facie* discrimination, instead affirming Justice Barnes's decision only on the basis that the Commission's reasons raised a serious question as to what legal test it had applied (*Johnstone v Canada (Attorney General)*, 2008 FCA 101 at para 2, 164 ACWS (3d) 838, aff'g 2007 FC 36, 306 FTR 271)**.** However, I see no reason for distinguishing between discrimination on the basis of sex (i.e. pregnancy) and discrimination on the basis of family status in the manner suggested by the CRA.

[44] I would also echo Justice Barnes's observation in *Johnstone*, above at para 33, that "[t]he law is not well settled with respect to the balancing of competing workplace interests insofar as family status accommodation is concerned". It is for the CRA to attempt to balance these competing interests. The Agency has made no attempt to do so in this case.

[45] On this issue, I conclude that:

1. The Applicant has made out a *prima facie* case of discrimination on the basis of family status; and

2. the CRA has failed to provide any explanation for the conduct in question.

[46] On this basis, the application for judicial review should succeed.

## VII. Discrimination on the Basis of Sex

[47] Given my conclusion that the policy is discriminatory on the basis of family status, I do not need to consider the alternate ground of discrimination on the basis of sex.

## VIII. Duty to Accommodate

[48] Under s. 15 of the *Act*, once a complainant has established a *prima facie* case of discrimination, the onus shifts to the employer to demonstrate that the *prima facie* discriminatory standard is a *bona fide* occupational requirement, and if so, to consider whether the complainant can be accommodated to the point of undue hardship. In this case, it is obvious that the CRA did not consider either *bona fide* occupational requirements or undue hardship. The Agency did not do so for the simple reason that it did not believe that its practice vis-à-vis the Applicant was discriminatory.

[49] It may be that the CRA has compelling reasons for requiring experience as described in the competition posting. It may also be that the lengthy periods of absence of the Applicant would create difficulties within the organization that rise to the level of undue hardship. On the

other hand, if the CRA turns its mind to the job requirements and this individual, there may be an alternative to the experience requirement, such as a specialized written assessment examination. This Court would not presume to direct the CRA in how these factors of *bona fide* occupational requirement and accommodation should be assessed.

## IX. Conclusion

[50] The CRA's refusal to accommodate the Applicant's period of Family Leave in the context of its experience requirement is *prima facie* evidence of discrimination in the course of her employment contrary to ss. 7 and 10 of the *Act*. In effect, the Applicant suffered an adverse effect due to her family status, a prohibited ground of discrimination. The CRA provided no reasonable explanation for this discrimination.

[51] The remedy, in this case, will be to return the matter to the CRA. The CRA will be directed to accept that the practice of not accommodating the Applicant's Family Leave in its experience requirement was discriminatory. The CRA must now consider the Applicant's applications for the two positions in accordance with s. 15 of the *Act*.

[52] As acknowledged by both parties at the oral hearing, costs in the amount of $3,500.00, inclusive of disbursements and HST, would be appropriate.

## JUDGMENT

**THIS COURT ORDERS AND ADJUDGES that**:

1. the application for judicial review is allowed and the decisions to exclude the Applicant from the competitions for the MG-05 and SP-08 positions are quashed;

2. for each of the MG-05 and SP-08 selection processes, the matter will be returned to the CRA to assess whether, in accordance with s. 15(2) of the *Act*, the accommodation of the needs of the Applicant would impose undue hardship on the CRA, considering health, safety and cost; and

3. costs, fixed in the amount of $3,500.00, inclusive of disbursements and HST, are awarded to the Applicant.

"Judith A. Snider"
Judge

# Appendix

*Canadian Human Rights Act*, RSC 1985, c H-6

*Prohibited grounds of discrimination*

**3.** (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

*Idem*

(2) Where the ground of discrimination is pregnancy or child-birth, the discrimination shall be deemed to be on the ground of sex.
R.S., 1985, c. H-6, s. 3;1996, c. 14, s. 2.

*Multiple grounds of discrimination*

**3.1** For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds.
1998, c. 9, s. 11.

*Employment*

**7.** It is a discriminatory practice, directly or indirectly,

. . .

(*b*) in the course of employment, to differentiate adversely in relation to an employee,

on a prohibited ground of discrimination.
1976-77, c. 33, s. 7.

*Loi canadienne sur les droits de la personne*, LRC 1985, c H-6

*Motifs de distinction illicite*

**3.** (1) Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, l'état de personne graciée ou la déficience.

*Idem*

(2) Une distinction fondée sur la grossesse ou l'accouchement est réputée être fondée sur le sexe.
L.R. (1985), ch. H-6, art. 3; 1996, ch. 14, art. 2.

*Multiplicité des motifs*

**3.1** Il est entendu que les actes discriminatoires comprennent les actes fondés sur un ou plusieurs motifs de distinction illicite ou l'effet combiné de plusieurs motifs.
1998, ch. 9, art. 11.

*Emploi*

**7.** Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :

. . .

*b*) de le défavoriser en cours d'emploi.
1976-77, ch. 33, art. 7; 1980-81-82-83, ch. 143, art. 3.

*Discriminatory policy or practice*

**10.** It is a discriminatory practice for an employer, employee organization or employer organization

(*a*) to establish or pursue a policy or practice, or

. . .

that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

R.S., 1985, c. H-6, s. 10; 1998, c. 9, s. 13(E).

*Exceptions*

**15.** (1) It is not a discriminatory practice if

(*a*) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a *bona fide* occupational requirement;

. . .

*Accommodation of needs*

(2) For any practice mentioned in paragraph (1)(*a*) to be considered to be based on a *bona fide* occupational requirement and for any practice mentioned in paragraph (1)(*g*) to be considered to have a *bona fide* justification, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.

. . .

*Lignes de conduite discriminatoires*

**10.** Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite et s'il est susceptible d'annihiler les chances d'emploi ou d'avancement d'un individu ou d'une catégorie d'individus, le fait, pour l'employeur, l'association patronale ou l'organisation syndicale :

*a*) de fixer ou d'appliquer des lignes de conduite;

…

L.R. (1985), ch. H-6, art. 10; 1998, ch. 9, art. 13(A).

*Exceptions*

**15.** (1) Ne constituent pas des actes discriminatoires :

*a*) les refus, exclusions, expulsions, suspensions, restrictions, conditions ou préférences de l'employeur qui démontre qu'ils découlent d'exigences professionnelles justifiées;

. . .

*Besoins des individus*

(2) Les faits prévus à l'alinéa (1)*a*) sont des exigences professionnelles justifiées ou un motif justifiable, au sens de l'alinéa (1)*g*), s'il est démontré que les mesures destinées à répondre aux besoins d'une personne ou d'une catégorie de personnes visées constituent, pour la personne qui doit les prendre, une contrainte excessive en matière de coûts, de santé et de sécurité.

. . .

*Application*

(8) This section applies in respect of a practice regardless of whether it results in direct discrimination or adverse effect discrimination.

*Application*

(8) Le présent article s’applique à tout fait, qu’il ait pour résultat la discrimination directe ou la discrimination par suite d’un effet préjudiciable.

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | T-569-11 |
| **STYLE OF CAUSE:** | PATTERSON v CANADA REVENUE AGENCY |
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| **DATED:** | DECEMBER 1, 2011 |

**APPEARANCES:**

| | |
|---|---|
| Steven Welchner | FOR THE APPLICANT |
| Talitha A. Nabbali | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Welchner Law Office<br>Professional Corporation<br>Ottawa, Ontario | FOR THE APPLICANT |
| Myles J. Kirvan<br>Deputy Attorney General of Canada<br>Ottawa, Ontario | FOR THE DEFENDANT |