

## Supreme Court of Canada Renders Decision on Supplementary Employment Benefits

In a decision issued yesterday (November 12, 2014), the Supreme Court of Canada (SCC) allowed an appeal brought by the British Columbia Teachers' Federation (BCTF). The BCTF appealed a decision of the British Columbia Court of Appeal in respect of a decision of Arbitrator John Hall. The SCC restored the decision of Arbitrator Hall, which had granted the union's grievance alleging that birth mothers were treated in an unequal fashion vis-à-vis birth fathers and adoptive parents concerning Supplementary Employment Benefits (SEB) paid to these categories of persons by the employer during birth and parental leave periods.

### Background

Pursuant to the collective agreement at issue, birth mothers, birth fathers and adoptive parents receive 95% of the amount of their salary for a two-week unpaid waiting period for Employment Insurance (EI) benefits and 70% of the difference between EI benefits and their salary for an additional 15 weeks, which constitutes the SEB. Arbitrator Hall found that there was discrimination because birth mothers experienced differential treatment by being denied parental benefits available to birth fathers and adoptive parents. Arbitrator Hall agreed with the union that the case law differentiates between maternity (pregnancy) leave and parental leave and, as well, as between any benefits that may be associated with those two types of leave, and that the collective agreement's exclusion of birth mothers from entitlement to both types of leave/benefits constitutes discrimination. Arbitrator Hall allowed the grievance and ordered the parties to remedy the discriminatory provisions, with his retention of arbitral jurisdiction if the parties were unable to agree. The Employer (SD No. 36 (Surrey)) appealed to the BC Court of Appeal.

In its decision, the BC Court of Appeal determined that the arbitrator erred in his interpretation of the human rights principles applicable to this case and in his finding that the distinctions between the benefit afforded to birth mothers and the benefit afforded to birth fathers and adoptive parents constituted discrimination. The Court ruled that because all three categories of those entitled to leave and statutory benefits associated with birth or adoption are entitled under the terms of the collective agreement to receive payment for a two-week waiting period and 15 weeks' SEB as salary at the same level, there was no unequal treatment and that, absent a sustainable finding on unequal treatment, there was no basis for the arbitrator to conclude that birth mothers were being treated in a discriminatory way contrary to the *Human Rights Code*.

The Union (the BC Teachers' Federation on behalf of the Surrey Teachers' Association) filed leave to appeal the BC Court of Appeal decision to the Supreme Court of Canada.

### **The SCC Decision**

The Supreme Court of Canada heard the appeal and issued its decision from the bench immediately after oral argument yesterday, allowing the appeal and restoring Arbitrator Hall's award on both the merits of the grievance and the remedy granted by the arbitrator.

The parties to the collective agreement — the Surrey School District and the Surrey Teachers' Association — must now attempt to negotiate replacement, non-discriminatory collective agreement provisions. If they are unable to agree on replacement language, the parties can return to Arbitrator Hall in respect to remedy.

The extent to which this decision has application for other school districts will depend on whether similar language is contained in the collective agreement with the local teachers' union, as there is no provincial collective agreement language with respect to this matter.

### **Questions**

If you have any questions, please contact your BCPSEA district liaison or Jennifer Duprey, BCPSEA General Counsel ([jenniferd@bcpsea.bc.ca](mailto:jenniferd@bcpsea.bc.ca)).