



MONDAY, APRIL 24, 2023  
FOR IMMEDIATE RELEASE

## Court of Appeal affirms broader protections for parents and caregivers in the workplace

**Vancouver B.C.** – On Friday, the B.C. Court of Appeal issued a decision that clarifies the circumstances in which parents and caregivers can seek accommodation in their workplaces.

The Court released their decision in *Gibraltar Mines Ltd. v. Harvey*, a case alleging discrimination against the mother of a young child by her employer. B.C.'s Human Rights Commissioner intervened in the case to address the legal test for family status discrimination in B.C.

'Family status' is a protected ground in B.C.'s *Human Rights Code*, prohibiting discrimination based on a person's family situation, such as if a person is a caregiver for children or elderly parents. To determine whether family status discrimination has taken place, decision makers in B.C. have traditionally used a two-part test. This test asked whether the employer unilaterally changed a worker's terms of employment and whether there was a serious interference with a substantial parental or other family duty as a result. The main issue before the Court of Appeal in *Gibraltar* was whether the law did, in fact, require a unilateral change to terms of employment as part of the legal test to establish discrimination.

Friday's ruling means that employees can qualify for a workplace accommodation when any condition of their employment has an adverse effect on an important parental duty. Complainants are not required to show that their employer has changed their terms of employment. This is particularly important for parents of young children whose parental obligations may change during their employment and conflict with their workplace responsibilities.

***"The Court's decision is welcome and is a significant win for gender equality in the workplace in many ways. It is an important step forward, but there remain outstanding issues that need to be resolved to ensure that mothers and other caregivers are able to access the full protection of human rights law."—Kasari Govender, B.C.'s Human Rights Commissioner***

Unfortunately, the Court also commented on the second part of the test for family status discrimination. While the Court affirmed that all types of discrimination should be subject to the same test (the *Moore* test), it expressed the view that the requirement for complainants to show a "serious interference" with a "substantial obligation" is consistent with the *Moore* test. The Commissioner is disappointed that the Court commented on this subject without full submissions from the parties or the Commissioner.

## Media contact

To request an interview with Commissioner Kasari Govender, please contact Charlotte Kingston, Director, Communications, at [media@bchumanrights.ca](mailto:media@bchumanrights.ca) or 1-250-216-4534.

## Media kit

[Download](#) our media kit for images of Commissioner Kasari Govender.

## Resources

- [More information about the Commissioner's interventions on this case are available here](#)
- [Press release announcing the Commissioner's second intervention in \*Gibraltar Mines Ltd. v. Harvey\*](#)
- [Press release announcing the Commissioner's first intervention in \*Gibraltar Mines Ltd. v. Harvey\*](#)
- [Press release reacting to the BC Supreme Court decision in \*Gibraltar Mines Ltd. v. Harvey\*](#)

## About BCOHRC

BC's Office of the Human Rights Commissioner exists to address the root causes of inequality, discrimination and injustice in B.C. by shifting laws, policies, practices and cultures. We do this work through education, research, advocacy, inquiry and monitoring. Learn more at: [bchumanrights.ca](http://bchumanrights.ca)

## About the Commissioner

B.C.'s Human Rights Commissioner, Kasari Govender, started her five-year term on Sept. 3, 2019. Since then, our Office has been working swiftly to build a strong team, to listen deeply to the concerns of British Columbians, to deliver education materials on our rights and responsibilities, to issue policy guidance to protect marginalized communities and to lay a human rights-based foundation for our work. As an independent officer of the Legislature, the Commissioner is uniquely positioned to ensure human rights in B.C. are protected, respected and advanced on a systemic level throughout our society.

## Follow us

Get the latest human rights news from us on Twitter ([@humanrights4BC](https://twitter.com/humanrights4BC)), Facebook ([facebook.com/HumanRights4BC](https://facebook.com/HumanRights4BC)) and Instagram ([@humanrights4BC](https://www.instagram.com/humanrights4BC)).

