

HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: ABQB UPHOLDS CHIEF COMMISSIONER'S DECISION ON JUDICIAL REVIEW, CONCLUDING THE CHIEF COMMISSIONER DREW A REASONABLE INFERENCE THAT PREFERENCE FOR A FEMALE BABYSITTER COULD BE EASILY EXPLAINED

A man complained to the Human Rights Commission that he was discriminated against based on gender when a woman failed to consider him for a babysitting position she posted on Kijiji on the basis that he was male. She was looking for someone to babysit her child in her home and preferred a female. The commissioner concluded that advertising for childcare in a private home falls within the scope of section 8 of the *Human Rights Act*, but that the woman's preference for the gender of the person who will look after her child in her own home was a BFOR, thereby justifying the discrimination. The decision was upheld on judicial review.

Administrative law – Decisions reviewed – Human Rights Commission – Gender – Judicial review – Standard of review – Reasonableness – Employment

Cyrynowski v. Alberta (Human Rights Commission), [2017] A.J. No. 1300, 2017 ABQB 745, Alberta Court of Queen's Bench, December 4, 2017, D. Pentelchuk J.

Mr. C applied for a babysitting position that was privately advertised on Kijiji by Ms. S. Ms. S declined to consider Mr. C for the position because he was male and she was looking for a female. Mr. C filed a complaint with the Alberta Human Rights Commission alleging discrimination based on gender. The HRC director dismissed the complaint, finding the parties' relationship was private and not an employment relationship falling within the scope of s. 8 of the Alberta *Human Rights Act*. In the alternative, the director concluded Ms. S's refusal to consider Mr. C was based on a bona fide occupational requirement (BFOR).

Mr. C requested a review of the decision by the chief commissioner. The commissioner upheld the director's dismissal. The commissioner concluded that advertising for childcare in a private home did indeed fall within the scope of s. 8 of the HRA, but agreed with the director that Ms. S's preference for who looks after her child in her own home is a BFOR.

At the hearing of Mr. C's petition for judicial review, the court reviewed the commissioner's decision on a standard of reasonableness, finding that the conclusion that babysitting in a private home falls within the scope of the HRA was reasonable. With respect to the commissioner's finding that Ms. S's preference for a female applicant was a BFOR, the court said that by drawing this conclusion in the absence of submissions or an explanation from Ms. S (who did not participate in any stage of Mr. C's complaint or subsequent proceedings), the commissioner "came perilously close to engaging in speculation or conjecture in finding a BFOR." The court noted the commissioner was permitted to draw reasonable inferences from the facts, and concluded that the commissioner drew a reasonable inference that Ms. S's preference for a female babysitter could be easily explained. The application for judicial review was dismissed.

This case was digested by [Kara Hill](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Kara Hill at khill@harpergrey.com.