



Brooks v. Canada Safeway Ltd.

[1989] 1 S.C.R. 1219

Country: Canada

Region: Americas

Year: 1989

Court: Supreme Court

Health Topics: Health systems and financing, Sexual and reproductive health

Human Rights: Freedom from discrimination, Right to favorable working conditions, Right to social security

Facts

Canada Safeway Ltd. maintained a group insurance plan that included weekly benefits for loss of pay due to accident or illness. The plan excluded pregnant women from coverage during a seventeen week period before, during, and after pregnancy. During that period, the plan excluded pregnant women suffering from both pregnancy and non-pregnancy-related afflictions. For part of that period, pregnant women could claim benefits under Manitoba's Unemployment Insurance Act, 1971. The Unemployment Insurance Act, however, entitled pregnant women to only fifteen weeks of coverage. This left pregnant Safeway employees without unemployment insurance for two weeks. The Unemployment Insurance Act plan also provided less monetary benefits per week than the Safeway plan and had a longer qualifying period.

Three part-time cashiers employed by Safeway who became pregnant in 1982, including Susan Brooks, brought a complaint to the Manitoba Human Rights Commission. They argued that Safeway's policy violated section 6(1) of The Human Rights Act of Manitoba because it discriminated based on sex and family status (Note: The Human Rights Act of Manitoba was replaced in 1987 by the Manitoba Human Rights Code, section 9(2) of which specifically included "pregnancy, the possibility of pregnancy, or circumstances related to pregnancy" in its definition of discrimination based on sex).

The Manitoba Human Rights Tribunal adjudicator ruled that Safeway's plan discriminated against pregnant employees but that discrimination on the basis of pregnancy did not constitute discrimination on the basis of sex or family status. As a result, the adjudicator found that Safeway's plan did not contravene s. 6(1). Brooks, her two fellow cashiers, and the Manitoba Human Rights Commission appealed the Tribunal decision to the Manitoba Court of Queen's Bench. That court agreed with the adjudicator's finding. The case then went to the Court of Appeal of Manitoba which upheld the decisions from the courts below. The complainants then appealed to the Supreme Court of Canada.

Decision and Reasoning

The Supreme Court of Canada unanimously overturned the lower court decisions and affirmed that discrimination based on pregnancy was discrimination based on sex. The Court allowed the appeal with costs and instructed the Manitoba Human Rights Tribunal adjudicator to determine the appropriate remedy pursuant to the Manitoba Human Rights Act.

The Court found that Safeway's plan discriminated based on pregnancy because the plan "singles out pregnancy for disadvantageous treatment" compared to any other health-related reason for absence from the workplace. The Court affirmed that pregnancy was "a valid health-related reason for absence from a workplace" and was "of fundamental importance in our society." Accordingly, the Court asserted that even if pregnant women had been able to claim for non-pregnancy-related afflictions during the seventeen-week period, the Court would have found the plan discriminatory for excluding claims for pregnancy.

The Court held that discrimination based on pregnancy was discrimination based on sex. In doing so, it overturned its previous decision in *Bliss v. Attorney General of Canada*, [1979] 1 S.C.R. 183. The Court rejected the reasoning in *Bliss* that discrimination based on pregnancy was not discrimination based on sex because any inequalities between the sexes resulting from pregnancy were created by nature rather than legislation. Instead, the Court asserted that discrimination on the basis of something that affects only members of a particular group constitutes discrimination against that group. The Court held that because pregnancy was a condition unique to women, discrimination based on pregnancy was discrimination based on sex. The Court emphasized that in Canada, discrimination did not require intent to discriminate. It was

enough that the plan unfairly disadvantaged individuals or groups of society.

The Court declined to consider whether or not discrimination based on pregnancy is discrimination based on family status.

Decision Excerpts

“I agree entirely that pregnancy is not characterized properly as a sickness or accident. It is, however, a valid health-related reason for absence from the workplace and as such should not have been excluded from the Safeway plan. The underlying rationale of this plan is the laudable desire to compensate persons who are unable to work for valid health-related reasons. Pregnancy is clearly such a reason. By distinguishing accidents and illness from pregnancy, Safeway is attempting to disguise an untenable distinction. It is so obvious that pregnancy is of fundamental importance in our society. If the medical condition associated with procreation does not provide a legitimate reason for absence from the workplace, it is hard to imagine what would provide such a reason.” (Page 17)

“Furthermore, to not view pregnancy in this way goes against one of the purposes of anti-discrimination legislation. This purpose, which was noted earlier in the quotation from Andrews, supra, is the removal of unfair disadvantages which have been imposed on individuals or groups in society. Such an unfair disadvantage may result when the costs of an activity from which all of society benefits are placed upon a single group of persons. This is the effect of the Safeway plan. It cannot be disputed that everyone in society benefits from procreation. The Safeway plan, however, places one of the major costs of procreation entirely on one group in society: pregnant women. Thus in distinguishing pregnancy from all other health-related reasons for not working, the plan imposes unfair disadvantages on pregnant women.” (Page 18)

“Combining paid work with motherhood and accommodating the childbearing needs of working women are ever-increasing imperatives. That those who bear children and benefit society as a whole thereby should not be economically or socially disadvantaged seems to bespeak the obvious.” (Page 24)

“I am not persuaded by the argument that discrimination on the basis of pregnancy cannot amount to sex discrimination because not all women are pregnant at any one time. While pregnancy-based discrimination only affects part of an identifiable group, it does not affect anyone who is not a member of the group. Many, if not most, claims of partial discrimination fit this pattern. As numerous decisions and authors have made clear, this fact does not make the impugned distinction any less discriminating.” (Page 27)