



January 28, 2008

A publication of Miller  
Thomson LLP's Labour &  
Employment Practice Group

## LABOUR AND EMPLOYMENT COMMUNIQUÉ

### DENYING MATERNITY BENEFITS TO ADOPTIVE MOTHER PERMITTED

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Last week, the Supreme Court of Canada refused to hear an adoptive mother's claim that she should have been entitled to maternity benefits under the *Employment Insurance Act*.

Under the federal *Employment Insurance Act*, birth mothers receive a total of 50 weeks of benefits when they combine their 15 weeks of maternity and 35 weeks of parental benefits. In 1999 and 2003, a Vancouver woman adopted several children. She applied for both maternity and parental Employment Insurance benefits but only received 35 weeks of parental benefits. Her claim for the 15 weeks of maternity benefits, which was available only to birth mothers, was denied.

In 2007, she appealed the Canada Employment Insurance Commission's decision to the Federal Court of Appeal arguing that their refusal to grant the 15 weeks of maternity benefits violated her constitutional right to equality under the *Charter of Rights and Freedoms*. She argued that the maternity benefit has a dual purpose: to allow for some time to recover from the experience of pregnancy and giving birth, **and** to allow a mother to spend more time bonding with her child. The Federal Court of Appeal ruled that she was not entitled to maternity benefits because she did not undergo the "physiological and psychological experience" of pregnancy and childbirth. Adoption advocates argued, however, that 15 weeks was enough time to recover from childbirth and that most of that time was spent bonding with the child as opposed to physical recovery.

Displeased with the Federal Court's decision, she sought leave to appeal to the Supreme Court of Canada. On January 24, 2008, the Supreme Court denied leave to hear the appeal thereby upholding the Federal Court's decision. As is the customary practice, the Court did not provide any reasons for denying the leave to appeal application.

#### ABOUT THE AUTHOR:

Michael Conradi is a member of our Labour and Employment Group in Toronto. He provides legal services and advice to a wide range of clients in the private and public sectors.

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