

# Family Caregiving in Canada: A Fact of Life and a Human Right

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At some point in our lives, there is a high likelihood that each of us will provide care to someone we know – and receive care ourselves – at least once. Family members are typically the first to step up to provide, manage and sometimes pay for this care. The forms of family care we provide and receive are so diverse, not to mention second nature, that we may not even think of them as caregiving: driving a sibling to a medical appointment, preparing a meal for a grandparent, picking up a sick child from school – these are all a part of the “landscape of care” in which we live.

Families are highly adaptable and most of the time people find ways to manage their multiple work *and* family responsibilities, obligations and commitments. However, this can be challenging for some working caregivers, since most who juggle work and caregiving are employed full-time. When working family members, protected by the *Canadian Human Rights Act*, find themselves in a dilemma between providing required care and fulfilling their work obligations – and if they have exhausted other reasonable options to arrange for this care – employers may be obligated under human rights law to accommodate the employee on the basis of *family status*. Human rights are intended to provide a framework of rights and flexibility so that workers can fulfill both their work and their caregiving obligations.

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### **Accommodation under human rights requires flexibility from employees and employers**

Reconciling care and work in a harmonious manner requires respect and recognition from employers of the fact that sometimes family circumstances need *focused attention*. Ideally, an employer has in place policies that are inclusive, providing both flexible workplaces (which can reduce the number of individual requests) and a process for handling

individual requests for accommodation, where this flexibility may not be enough.

Individual requests for accommodation based on family status require that the employee show a *substantial caregiving obligation* – it cannot simply be a personal choice to do something for a family member. For example, a parent leaving work to drive a child to extracurricular activities would be a personal choice, whereas leaving work to drive them to a hospital if they could not find an available caregiver would be considered an obligation.

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Obligation alone, however, is not enough. The employee must demonstrate that they have attempted to reconcile work-care conflicts and have explored all realistic alternatives accessible to them. When individual requests arise, the employer must examine if there is a negative impact on the employee due to a dilemma between caregiving obligations and a practice or rule in the workplace. If this is the case, the employer must allow time for the employee to explore options, discuss the issue with the employee, do an individual assessment of the specific circumstances and consider flexible workplace arrangements (FWAs).

Employers *can* refuse to accommodate, but only if they can provide evidence that doing so would create “undue hardship” for their organization as a result of adjusting policies, practices, bylaws or physical space to accommodate. Undue hardship has no strict legal definition – each case must be treated within the specific context, taking into account various workplace and operational requirements. Human rights law also requires requests for accommodation to be considered *individually*, taking into account diverse family roles

and expectations. Employers must provide evidence as to the nature and extent of the hardship.

*Johnstone v. Canada* was a landmark family status case that helped to clarify the types of circumstances in which an employer has a duty to accommodate an employee with parent-child caregiving obligations. Fiona Johnstone and her husband worked full-time on rotating, unpredictable shifts for the Canada Border Service Agency (CBSA) while raising two toddlers. Her husband also travelled for business. Johnstone requested a full-time fixed shift schedule so she could fulfill her child care obligations. While the CBSA permitted fixed shifts, they only granted them on a part-time basis, so they refused to accommodate the request. The CBSA argued that child care responsibilities are the result of *personal choice* and did not trigger a “duty to accommodate.”

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The Canadian Human Rights Tribunal sided with Johnstone, ruling that she had indeed been discriminated against, and the Federal Court dismissed the Attorney General’s application for a judicial review of the case, confirming that parental child care obligations fall within the scope and meaning of the ground “family status” in the *Canadian Human Rights Act*. Honourable Mr. Justice Mandamin, dismissing the Attorney General’s application for a judicial review in *Canada v. Johnstone*, stated,

...it is difficult to have regard to family without giving thought to children in the family and the relationship between parents and children. The singular most important aspect of that relationship is the parents’ care for children. It seems to me that if Parliament intended to exclude parental child care obligations, it would have chosen language that clearly said so.

In 2014, this decision was upheld at the Federal Court of Appeal, and it has since been cited in a number of cases in jurisdictions in Canada. But the laws on this still vary slightly across the country. For example, in New Brunswick, Family Status is not a protected ground, and in Ontario it covers only a parent-child relationship, although it applies to those who provide care to an elderly parent.

### **Caregiving accommodation reduces costs for employees and employers**

Employer accommodation of care is not just about ensuring that human rights are recognized and respected – it can also help to mitigate the potential costs to employees *and* employers that could also result from caregiving. In a recent report, Janet Fast categorizes these costs to caregivers into three main categories: care labour, employment restrictions and out-of-pocket expenses.

Care labour costs for *employees* include time caregivers spend *with* the care recipient, time spent *on behalf* of the recipient (e.g. scheduling appointments), time spent *getting to/from* the recipient and time spent monitoring or managing care. Employment restrictions include reduced working hours or having to quit, experiencing decreased productivity and the resulting career limitations or reduced/forgone income. Out-of-pocket expenses include housing, community services, supplies and transportation that may also be incurred by caregivers.

The costs faced by employees as a result of caregiving pose direct and indirect costs for *employers*. Direct costs to employers include higher turnover, absenteeism and additional benefit costs (e.g. health care claims and disability leave for caregiving employees). Indirect costs include reduced return on investment in employees, poorer on-the-job performance and resulting spillover effects to co-workers, supervisors, customers and clients. There are costs to the overall economy as well: in Fast’s report, it is estimated that every year, Canada loses the equivalent of nearly 558,000 full-time employees from the workforce due to the inability to manage the conflicting demands of paid work and care.

Organizations that support employees with family caregiving obligations can benefit in many ways. It can help them align corporate social responsibility (CSR) commitments and enhance their public image and organizational reputation. A growing body of research shows that employee productivity, job performance, recruitment and retention benefit from FWAs.

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### **Many diverse approaches can facilitate family caregiving**

Family caregiving situations are unique, shaped by the individuals providing and receiving care, the nature of the required care, the occupation of the working caregiver and the organizational culture of their workplace. As such, there is no “one-size-fits-all” solution.

There is growing literature about providing and facilitating FWAs. The Canadian Human Rights Commission published *A Guide to Balancing Work and Caregiving Obligations*, which outlines a number of FWAs that can facilitate accommodation, including telework; job sharing; different or shifting start and end times; compressed schedules; extended maternity or parental leave; shift changes; compassionate, discretionary or other leave to care for sick family members; leave to provide childcare or eldercare in unanticipated or emergency situations; part-time work with pro-rated benefits; and shifting or sharing work duties or tasks.

### **Family caregiving rates expected to grow**

Caregiving is a common experience within (and between) families, regardless of where they live or where they are from. Accommodation of family caregiving is becoming increasingly relevant as families are getting smaller, Canada’s population ages and the resulting rate and complexity of disability increases. This emerging reality has raised concern about a growing “care gap” in Canada.

According to Statistics Canada, nearly half (46%) of Canadians from coast to coast to coast (13 million) have provided care to a family member or friend with a *long-term health condition, disability or aging need* at some point in their lives – 8 million (28% of the population) did so in 2012 alone.

Canada’s aging population is fuelling caregiving needs across the country. By 2030, seniors are projected to account for close to *one in four* people (up from 15.3% in 2013), and the number of centenarians is projected to grow from 6,900 to more than 15,000. Not only are there more seniors, but these seniors are living longer: average life expectancy at age 65 is 22.0 and 19.2 years for women and men, respectively (i.e. 87 and 84.2 years of age) – up from 19.0 and 14.7 years in 1981.

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Senior care and eldercare is only a part of the portrait of care in Canada. Children are also primary recipients. This generation has seen a significant increase in dual-earner households – from 36% of couples with children in 1976 to 69% in 2014, three-quarters of whom have both partners working full-time. While this has increased family income, it has also meant there are fewer family members available to help manage work and family responsibilities.

### **Family caregiving is diverse and complex – just like families**

Caregiving is diverse and complex, encompassing a wide range of activities. Statistics Canada’s *General Social Survey on Caregiving and Care Receiving* tracks a wide range of caregiving activities, including transportation, meal preparation, medical procedures, personal care, house maintenance and managing finances, but the list is not exhaustive. New and emerging issues, such as a spouse’s need to provide caregiving in support of their transgender partner’s medical transition or the need for a parent to appear in court regarding child custody and caregiving issues, can also remind us of the diverse variety of families and caregiving needs.

The fluid and evolving nature of care relationships between individuals can add another layer of complexity to our understanding of care. The care provided can vary in *type, nature and duration*, and it is shaped by the unique circumstances of the individual requiring care (see chart). Caregiving events can be short-term and episodic, such as if a family member experiences a temporary mobility restriction due to a broken leg. They can also be long-term and intensive, such as if a family member is living with a terminal illness in a palliative care centre.

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## Continuum of Care: Intensity, Predictability and Controllability

	Occasional daily care	Episodic care	Continuous/ long-term care	Palliative/ end-of-life care	Recuperative care	Home care
Caregiver involvement	Moderate to intense	Moderate to intense	Moderate to intense	Intense	Moderate to intense	Moderate to intense
Duration	Long-term May span years	Short- to mid-term May span days, weeks, months	Mid- to long-term May span months, years	Unpredictable Typically three to six weeks but could last months, years	Short- to long-term May span days to years depending on condition	Short- to long-term May span days to years depending on condition
Degree of control	High and predictable Easy to plan in advance for changes to work and life responsibilities	Limited and unpredictable Impossible to plan for in advance	Mid to high Periods of high control can be disrupted with periods of mid-level control	None	None to high Depends on condition, e.g. pulled muscle vs. hip replacement after an unexpected fall	High and predictable Easy to plan in advance for changes to work and life responsibilities
Example(s)	Groceries, yardwork, transportation	Treatment-related care e.g. appointment in response to arthritis flare-up	Chronic and/or progressive illness or disability e.g. Parkinson's, Alzheimer's	Care in hospital, palliative care facility, community or home environments	Recovery following surgery, pneumonia, stroke	Supporting independent living e.g. support service coordination, safety and security assistance

Some care requirements are predictable, thus giving caregivers a higher degree of control over their time and resources, while other situations can be more complicated. Regardless of the type, nature and duration of care, family caregivers must integrate it with their work related obligations and commitments – a balancing act that can be supported and accommodated by employers.

### Work-care reconciliation benefits families and employers

For nearly all Canadians, caregiving is inevitable at some point over the course of their lives. Since care provision is not always predictable and does not always arise outside working hours, employees and employers will need to reconcile work and care in creative ways that seek to maintain productivity and morale –

indeed, failing to do so results in costs on all sides. Open communication and creative approaches to harmonizing work and care in a flexible manner can benefit employees, employers and the labour market in Canada as a whole.

“This is an issue that will touch millions of Canadians at some point in their lives and will become increasingly important with demographic change. The CHRC encourages employers, employees, and unions to seek collaborative approaches to enable people with family caregiving responsibilities to continue to participate fully and meaningfully in the workforce.”

– David Langtry, Acting Chief Commissioner, Canadian Human Rights Commission, 2014





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