

# K & Ors v Secretary for Justice

DCEO 3, 4 and 7/1999

---

### Background

There were three Plaintiffs in this case, namely K, Y and W. They applied for the posts of ambulance man, fireman and customs officer respectively in the Fire Services Department and the Customs and Excise Department. In all three cases, the Plaintiffs were given conditional offers of employment, which were subsequently withheld or terminated because they had a parent with mental illness.

It was both Departments' policies to reject job applicants who have a first-degree relative with a history of mental illness of a hereditary nature. The Departments defended such a policy by arguing that the safety of fellow employees and members of the public was an inherent job requirement, and as the Plaintiffs were unable to fulfil such a requirement, the Departments' above decisions were not unlawful.

## The Court's decision

The Court held that the two Departments had discriminated against the Plaintiffs on account of the mental illness of their relatives, i.e. the disability of an associate under the Disability Discrimination Ordinance (DDO).

The Court further held that the Departments could not rely on the inherent job requirement exemption under the DDO. In the Court's view, the safety to fellow employees and members of the public was agreed to be an inherent job requirement for all three positions above. Nevertheless, the Departments failed to provide sufficient evidence to establish that the Plaintiffs' inability to meet such requirement was because of their parents' mental illness, as there was no information showing the Plaintiffs' risk to the mental illness was higher which would pose a real risk to safety. Hence, the Departments' discriminatory acts could not be exempted and hence were unlawful.

In calculating damages for injury to feelings, the Court took into account the prolonged period of injury caused to the Plaintiffs by the defence of the discrimination and the attitude of the Departments. The Court also considered the loss of past and future earnings as well as other benefits such as housing and pension entitled to the Plaintiffs had they been able to work in the Departments. The damages awarded to each of them could be summarised as follows:

	K HK\$	Y HK\$	W HK\$
Damages for injury to feelings	100,000.00	100,000.00	150,000.00
Interest thereon (11.5%)	23,000.00	28,206.94	46,478.70
Past loss of earnings (including interest)	106,510.28	96,939.54	97,884.13
Future loss of earnings	194,224.00	114,300.00	42,480.00
Loss of housing benefit	299,400.00	267,300.00	409,860.00
Loss of pension benefit	262,009.00	168,996.00	314,432.00
	<b>985,143.28</b>	<b>775,742.48</b>	<b>1,061,134.83</b>