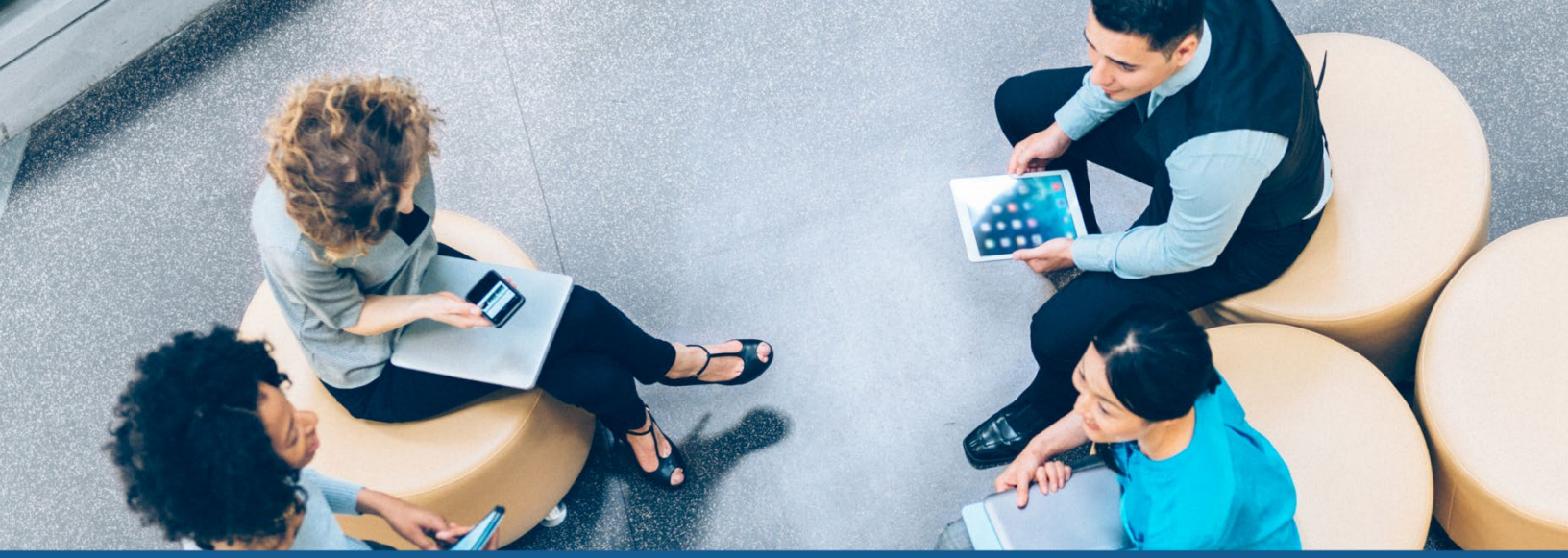

What's New in HR Law

Supreme Court of Canada Concludes Arbitrators can have Exclusive Jurisdiction over Human Rights Disputes

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Bottom Line

In *Northern Regional Health Authority v Horrocks*, 2021 SCC 423, ("*Horrocks*") the Supreme Court of Canada held, in a 6-1 ruling, that the Manitoba Human Rights Commission did not have jurisdiction to hear a human rights dispute in a unionized workplace. Rather, the Court ruled that, given the legislative framework in Manitoba, labour arbitrators have exclusive jurisdiction over unionized workers' complaints of human rights violations in the workplace.

Factual Background

Linda Horrocks (the "Employee") was a health care aide at the Northern Lights Manor, a personal care home run by the Northern Regional Health Authority (the "Employer"). The collective agreement between the Employer and the Employee's Union, the Canadian Union of Public Employees, Local 8600, prohibited discrimination on the basis of the employee's physical or mental disability, which is also a statutory protection under the Manitoba *Human Rights Code* (the "Manitoba *Code*")

The Employee disclosed her alcohol addiction and refused to enter into a "last chance agreement" requiring that she abstain from alcohol and engage in addiction treatment. The Union filed a grievance, which was settled by an agreement reinstating her employment on substantially the same terms as the last chance agreement. Shortly thereafter, the Employer terminated the Employee's employment for an alleged breach of those terms, citing her intoxication at work and a lack of "reasonable assurance" that her addiction was being treated and controlled.

The Manitoba *Code* Complaint

The Employee then filed a complaint with the Manitoba Human Rights Commission, which was heard by an adjudicator appointed under the Manitoba *Code*. The Employer contested the adjudicator's jurisdiction to hear the complaint, arguing the Supreme Court of Canada's judgment in *Weber v Ontario Hydro*, [1995] 2 SCR 929 ("*Weber*") recognizes exclusive jurisdiction in an arbitrator appointed under a collective agreement, and that this jurisdiction extends to human rights complaints arising from a unionized workplace.

Chief Adjudicator Walsh at the Manitoba Human Rights Commission disagreed with the Employer's argument, finding that she had jurisdiction. While *Weber* does recognize exclusive jurisdiction in labour arbitrators over disputes that arise from the interpretation, application, administration, or violation of a collective agreement, the essential character of this dispute, she held, was an alleged human rights violation. Chief Adjudicator Walsh went on to consider the merits of the complaint and found that the Employer had discriminated against the Employee.

Judicial Review: The Manitoba Court of Queen's Bench Decision, 2016 MBQB 89

The Employer applied for judicial review. On judicial review, Justice Edmond found error in the adjudicator's characterization of the essential character of the dispute, and set aside the adjudicator's decision on the issue of jurisdiction. As he saw it, the essential character of the dispute was whether the Employer had just cause to terminate the Employee. "[A]ny [such] dispute", he held, "including any human rights violation associated with the termination, is within the exclusive jurisdiction of labour arbitration". As such, Justice Edmond found it unnecessary to decide whether the adjudicator's decision on the merits of the complaint was reasonable.

The Manitoba Court of Appeal's Decision, 2017 MBCA 98

The Court of Appeal agreed with Justice Edmond's conclusion that disputes concerning the termination of a unionized worker in Manitoba lie within the exclusive jurisdiction of a labour arbitrator, including where the dispute alleges human rights violations. Nevertheless, it held that the adjudicator had jurisdiction for several other reasons:

(a) The Employee "made a choice to sever" the employment and human rights aspects of her claim by not grieving her second termination ;

(b) The discrimination claim raised issues that "transcend[ed]" the specific employment context, because an employer's accommodation of an employee's alcohol dependency is "larger than the specifics of what occurred in the employment relationship"; and

(c)The Union was not interested in pursuing arbitration, thus precluding the Employee from bringing her claim to any forum if a labour arbitrator were to hold exclusive jurisdiction.

In the result, the Court of Appeal allowed the appeal and remitted the matter to the Court of Queen's Bench to determine whether the adjudicator's decision on the merits of the discrimination complaint was reasonable.

The Supreme Court of Canada's Decision

Writing for the majority, Justice Brown outlined the Supreme Court of Canada's disagreement with the adjudicator and the Court of Appeal:

> [5] Properly understood, this Court's jurisprudence has consistently affirmed that, where labour legislation provides for the final settlement of disputes arising from a collective agreement, the jurisdiction of the decision-maker empowered by that legislation — generally, a labour arbitrator — is exclusive. **Competing statutory tribunals may carve into that sphere of exclusivity, but only where that legislative intent is clearly expressed.** Here, the combined effect of the collective agreement and *The Labour Relations Act*, C.C.S.M., c. L10 is to mandate arbitration of "all differences" concerning the "meaning, application, or alleged violation" of the collective agreement (s. 78(1)). In its essential character, Ms. Horrocks' complaint alleges a violation of the collective agreement, and thus falls squarely within the arbitrator's mandate. The Human Rights Code does not clearly express legislative intent to grant concurrent jurisdiction to the adjudicator over such disputes. It follows that the adjudicator did not have jurisdiction over the complaint, and the appeal should be allowed.

The Supreme Court of Canada allowed the Employer's appeal and held that the adjudicator did not have jurisdiction to hear the Employee's discrimination complaint.

Check the Box

Since the release of the Supreme Court of Canada's decision, some commentators have expressed the view that *Horrocks* definitively ousts the jurisdiction of human rights tribunals in favour of labour arbitrators. However, a careful reading of the decision indicates that although this would now seem to be the case for unionized employees in Manitoba, the same is not necessarily true in other jurisdictions where the legislature has expressed the intent to support concurrent jurisdiction for both labour arbitrators and human rights tribunals.

In Ontario, for instance, recognition of concurrent jurisdiction between arbitrators and the Human Rights Tribunal of Ontario (the "HRTO") has long been accepted and established. What, if any, impact *Horrocks* will have in Ontario and other jurisdictions has yet to be seen. However, as the

Horrocks decision makes clear, the applicable statutory regime will be an important consideration when assessing whether one or more adjudicator has jurisdiction over a particular dispute.

Need more information?

For additional information or strategic advice on litigation involving human rights claims, please contact 416-408-3221 or your regular lawyer at the firm.

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