



What's New in HR Law

Human Rights Tribunal Confirms It Has Concurrent Jurisdiction to Decide Human Rights Claims of Unionized Employees

October 5, 2022 | By [Cassandra Ma](#)

Bottom Line

The recent decision in *Weilgosh v. London District Catholic School Board*, 2022 HRTO 1194 (“*Weilgosh*”), confirms that the Human Rights Tribunal of Ontario (the “Tribunal”) shares concurrent jurisdiction with labour arbitrators to decide the human rights claims of unionized employees. The decision settles a significant question of law that arose after last year’s ruling by the Supreme Court of Canada in [Northern Regional Health Authority v. Horrocks](#), 2021 SCC 42 (“*Horrocks*”).

***Horrocks*: Supreme Court Finds that Labour Arbitrator Has Exclusive Jurisdiction over Human Rights Allegations Raised by Unionized Workers in Manitoba**

As discussed in [our previous update](#), the Supreme Court of Canada in *Horrocks* considered whether the Manitoba Human Rights Commission could adjudicate a complaint by a unionized employee. The employee had been dismissed from employment for an alleged breach of a last chance agreement, which required her to abstain from alcohol consumption and seek treatment for alcohol addiction. Although her union had assisted her in negotiating the last chance agreement, the employee did not ask the union to

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grieve her dismissal. Instead, the employee filed a complaint with the Manitoba Human Rights Commission alleging that her dismissal amounted to disability-related discrimination.

The Supreme Court ultimately found that, based on the relevant legislation, labour arbitrators have exclusive jurisdiction to decide the human rights allegations raised by unionized workers in Manitoba's provincially regulated workplaces. Section 78(1) of *The Labour Relations Act* in Manitoba mandates arbitration of "all differences" concerning the meaning, application, or alleged violation of a collective agreement, including whether a bargaining unit employee is dismissed for discriminatory reasons. *The Human Rights Code* of Manitoba does not clearly express a legislative intent to grant concurrent jurisdiction to human rights adjudicators over these types of employment disputes.

Weilgosh: Tribunal Concludes that Horrocks Does Not Apply in Ontario

In *Weilgosh*, the Tribunal was asked to determine whether *Horrocks* would oust the Tribunal's jurisdiction over the human rights complaints of unionized employees in Ontario's provincially regulated workplaces. Two test cases were heard together by the Tribunal on this issue: one from the education sector, and one from the police services sector.

The Tribunal concluded that it shares jurisdiction with labour arbitrators over the human rights claims raised by unionized employees. This conclusion was based on the specific language of the *Human Rights Code* (the "Code"), which evinced the Ontario Legislature's intention to create overlapping jurisdiction for human rights disputes arising from a collective agreement:

[41] In our view, the broad language used in the *Code* signals a legislative intent that the Tribunal maintains concurrent jurisdiction. Despite being presumptively aware of the decisions in *Weber* and *Naraine*, and the fact that the Tribunal had continued to hear cases arising from collective agreements, the Legislature did not take steps to limit or narrow the deferral and dismissal powers in sections 45 and 45.1. This signals a clear intent to permit Tribunal decision-makers the power to decide whether to defer applications that could be decided elsewhere, including by arbitration, by grievance, by review or otherwise. The broad discretion provided to Tribunal decision-makers indicates a positive expression of the Legislature to maintain concurrent jurisdiction, thereby displacing labour arbitration as the sole forum for disputes arising from a collective agreement.

In the result, the Tribunal allowed the human rights applications in the two test cases to proceed in the Tribunal's adjudicative process. Because the applications fell within the scope of collective agreements governed by the *Labour Relations Act, 1995* and the *Police Services Act*, the Tribunal had concurrent jurisdiction to decide the applicants' claims of discrimination and harassment.

Check the Box

At this juncture, it is unknown whether *Weilgosh* will be judicially reviewed by the Ontario Divisional Court. Unless the Tribunal's decision is overturned, the *status quo* remains in Ontario: unionized employees of provincially regulated workplaces can still choose to pursue their *Code*-related allegations at labour arbitration or in a proceeding before the Tribunal.

Need More Information?

For more information or assistance with human rights matters or litigation before the Tribunal, contact your regular lawyer at the firm.



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