What's New in HR Law

Staving Off Duplicative and Statute-Barred Proceedings: Guidance from the HRTO and WSIAT

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Bottom Line

Given the various avenues of recourse available to aggrieved workers, employers can find themselves defending simultaneous legal proceedings across multiple forums. In a recent example, a worker alleged she experienced harassment, bullying, and a poisoned work environment. In connection with these allegations, the worker first filed an application with the Human Rights Tribunal of Ontario (HRTO). Thereafter, and based largely on the same set of facts, the worker filed a civil action in the Ontario Superior Court of Justice claiming constructive dismissal.

Following a request for an order made by the employer, the HRTO found that the worker was statute-barred from pursuing her application in light of the initiation of her civil claim. In a separately issued decision, the Workplace Safety and Insurance Appeals Tribunal (WSIAT) ruled that the worker was likewise statute-barred from pursuing her civil action as a result of the fact that her claim – at the core of which was a workplace injury – fell within the exclusive jurisdiction of the workers' compensation benefits scheme. These decisions underscore the importance of understanding the interplay between civil and administrative proceedings. They

are also welcome news to employers that, in the right circumstances, a multiplicity of proceedings can be avoided.

Factual Background

The employee worked for the respondent employer, a large hotelier, in its housekeeping department since 2015. In September 2017, the employee filed an application with the HRTO, alleging discrimination, bullying, and harassment. In February 2018, before the HRTO application was determined, the employee resigned from her employment. She subsequently filed a civil action in the Superior Court of Justice, which outlined substantially the same allegations as those raised in her earlier HRTO application.

After the civil action was filed, the employer requested that the HRTO dismiss the employee's application under section 34(11) of the *Human Rights Code* (*Code*) on the basis that the civil action outlined similar facts and allegations, and requested remedies similar to those available through the HRTO.

The employer also applied to the WSIAT (in what is known as a "right to sue" application) for a determination that the employee was statute-barred from pursuing her civil action on the basis that her claim fell within the exclusive jurisdiction of the *Workplace Safety and Insurance Act, 1997* (*WSIA*). The employer brought this application even though the employee had not filed a claim for benefits under the *WSIA*.

The HRTO's Decision (2019 HRTO 1222)

Section 34(11) of the *Code* expressly precludes a person from making an application to the HRTO where a civil proceeding has been commenced in which the person is seeking an order declaring an infringement of a *Code*-protected right; or where a court has finally determined the issue of whether a *Code*-protected right has been infringed.

In this case, the employer requested that the HRTO dismiss the employee's application on the basis that her civil action was nearly identical to her HRTO application. Although the civil action did not expressly seek damages for violation of the *Code*, the HRTO ultimately held that both the HRTO application and the civil claim raised substantially the same allegations of harassment and poisoned work environment, such that the damages sought by the employee in the civil action could, for all intents and purposes, be characterized as damages for injury to dignity, feelings and self-respect. The HRTO, therefore, accepted the employer's argument and dismissed the application pursuant to section 34(11) of the *Code*.

Notably, at the time the HRTO rendered this decision, the employer's right to sue application to the WSIAT had been filed, but had not yet been decided. The employee argued that, should the employer be successful before the WSIAT, she would be deprived of the right to pursue her rights both at the HRTO and in the courts. The HRTO rejected this argument, holding that whether the employee was barred from commencing a civil action pursuant to a different statutory scheme was not relevant to a determination of whether section 34(11) of the *Code* was applicable. Acknowledging that the employee's only recourse may be a claim for benefits under the WSIA, her HRTO application was nevertheless dismissed based on a strict interpretation of the relevant statutory provisions.

The WSIAT's Decision (Decision No. 1227/19)

The employer's right to sue application to the WSIAT was likewise successful, and is the WSIAT's first decision that deals squarely with a claim of chronic mental stress arising from alleged workplace harassment.

In short, the *WSIA* sets out a no-fault scheme that requires employees to make benefit claims in lieu of all other rights of action arising from a workplace accident or injury. Further, if an employee has been subjected to workplace harassment and appropriate medical evidence supports a diagnosis of a mental stress injury, the employee may be entitled to benefits under the *WSIA* for chronic mental stress.

In a lengthy and well-reasoned decision, the WSIAT found in favour of the employer. It decided the employee was statute-barred from proceeding with her civil action claiming damages caused by the alleged workplace harassment. If the employee wished to seek benefits for any injury resulting from alleged workplace harassment, she could file a claim for benefits under the *WSIA* within six months of the WSIAT's decision.

Further, because the employee framed her civil action in a way that used allegations of the same harassment to underpin additional allegations of constructive dismissal, the WSIAT determined that these facts, if proven, would be inextricably linked to a claim for a workplace injury, which is governed exclusively by the *WSIA*. Even though some of the remedies sought by the employee in her civil action were different from those compensable under the *WSIA*, the WSIAT still concluded that, because the damages sought in the civil action flowed from a work injury falling within the scope of the *WSIA*, the civil action was statute-barred.

This WSIAT decision is consistent with its earlier jurisprudence that, in right to sue applications, it will assess the fundamental nature of the civil action. If the civil action arises from a workplace accident or injury, it will be statute-barred from proceeding through the courts.

Check the Box

These recent decisions demonstrate the importance of carefully evaluating jurisdictional issues, as well as the statutory powers of administrative tribunals to limit or dismiss proceedings, when developing an overarching litigation strategy. In consultation with counsel, employers may be able to identify opportunities to limit the number of legal proceedings they are forced to defend by effectively challenging duplicative and/or statute-barred claims.

Need more information?

For additional information or strategic advice on litigation involving employment and human rights issues, please contact Giovanna Di Sauro at 416-408-5513, or your regular lawyer at the firm.

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