

FTR Now

Supreme Court of Canada Concludes Arbitrators Can Have Exclusive Jurisdiction Over Human Rights Claims

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In [Northern Regional Health Authority v. Horrocks](#), the Supreme Court of Canada held that the Manitoba Human Rights Commission (Commission) did not hold concurrent jurisdiction over a human rights dispute involving a unionized workplace. Rather, a labour arbitrator held exclusive jurisdiction over the dispute.

In this *FTR Now*, we provide a summary of *Horrocks* and consider some takeaways that will be of interest to employers.

Background

As we reported in our [Case in Point of March 9, 2020](#), the employer, the Northern Regional Health Authority (NRHA), terminated the employment of a unionized healthcare worker (Ms. H) after Ms. H failed to follow the terms of an agreement requiring her to abstain from alcohol and obtain addiction treatment. Ms. H filed a complaint with the Commission, alleging discrimination on the basis of a disability (alcohol addiction).

Relying on the precedent set in [Weber v. Ontario Hydro](#), the NRHA challenged the jurisdiction of the adjudicator and asserted that an arbitrator's exclusive jurisdiction extended to human rights complaints arising from a unionized workplace. The adjudicator disagreed and held that she had jurisdiction because the essential character of the dispute was an alleged human rights violation. The adjudicator found that the NRHA had discriminated against Ms. H.

The NRHA sought judicial review of the adjudicator's decision. The reviewing judge concluded that the essential character of the dispute was whether there was just cause to terminate the employment of the worker, which was a matter within the exclusive jurisdiction of a labour arbitrator.

The Commission appealed this decision and the Manitoba Court of Appeal allowed the appeal, concluding that the reviewing judge erred in overturning the adjudicator's decision and confirming the concurrent jurisdiction of the Commission.

At the Supreme Court of Canada

A six-member majority of the Supreme Court of Canada (Supreme Court) allowed the NRHA's appeal and held that the Commission adjudicator did not have jurisdiction over Ms. H's discrimination complaint.

The Supreme Court's analysis involved applying a two-step test to determine whether the exclusive jurisdiction of a labour arbitrator (in Manitoba) extended to adjudicating claims of discrimination.

As part of the first step of the test, the Supreme Court examined the Manitoba *Labour Relations Act* and its mandatory dispute resolution clause that discloses a legislative intent to grant exclusive jurisdiction to the labour arbitrator over all disputes arising from the collective agreement. As a result of this clause, the Supreme Court stated that a clear expression of legislative intent was required to grant concurrent jurisdiction over this dispute to another statutory tribunal. The Supreme Court then analyzed the Manitoba *Human Rights Code* (*Code*) and found that the *Code* does not include a provision that expressly displaces the exclusive jurisdiction of a labour arbitrator. While the Supreme Court indicated that concurrent jurisdiction could arise from necessary implication from some types of provisions, there was insufficient evidence in the Manitoba *Code* to support a finding that the Commission held concurrent jurisdiction over the complaint.

For the second step of the test, the Supreme Court considered whether the essential character of the dispute fell within the scope of the labour arbitrator's exclusive jurisdiction. The Supreme Court stated that the dispute concerned Ms. H's attendance at work while under the influence of alcohol and her failure to follow the terms of an alcohol abstinence agreement. The essential character of Ms. H's complaint was that the employer had violated the prohibition on discrimination set out under the collective agreement. The Supreme Court concluded that the labour arbitrator had exclusive jurisdiction over the dispute because it arose from an alleged violation of the collective agreement.

Takeaways for Employers

While the implications for unionized employers in Manitoba are quite clear, the broader implications of the *Horrocks* decision for employers throughout Canada are less so. The Supreme Court's decision confirms that labour arbitrators hold exclusive jurisdiction over disputes arising out of a collective agreement, including human rights complaints, unless the legislature has provided jurisdiction to another adjudicative body, which could be concurrent or, in some cases, exclusive. Thus, the decision does not go so far as to oust the jurisdiction of administrative tribunals over such matters entirely, meaning that the impact of this decision in other jurisdictions remains to be seen.

While the human rights legislation in Manitoba did not provide concurrent jurisdiction to its Human Rights Commission, the legislative regimes in other jurisdictions may demonstrate an intention on the part of those jurisdictions to provide concurrent avenues for addressing human rights concerns. Each relevant statutory regime must be examined on its own to determine whether the legislature intended more than one decision-maker to have jurisdiction over a dispute.

Further, while this decision arises within the context of a human rights dispute, it is important to identify that the decision may have broader implications for other statutory tribunals which have competing or overlapping jurisdiction with labour arbitrators. To the extent that disputes before other tribunals have an essential character which falls within the scope of a labour arbitrator's jurisdiction, questions may arise concerning what is the appropriate forum to adjudicate those disputes.

If you require further information regarding *Horrocks* or have questions about how the decision could impact your organization, please contact [your regular Hicks Morley lawyer](#).

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