IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Nova Scotia (Human Rights Commission) v. Halifax (Regional Municipality), 2007 NSSC 163

Date: 20070319
Docket: SH 275121
Registry: Halifax

Between:

The Nova Scotia Human Rights Commission

Applicant

v.

The Halifax Regional Municipality,
a body corporate duly incorporated
pursuant to the laws of Nova Scotia

Respondent

Judge:	The Honourable Justice Arthur J. LeBlanc
Heard:	February 15th, 2007, in Halifax, Nova Scotia
Written Decision:	May 30th, 2007
Counsel:	Michael J. Wood, Q.C., for the applicant Randolph Kinghorne, Q.C., for the respondent

By the Court:

Introduction

[1] These are my reasons for the oral judgment given in this matter on March 19, 2007.

[2] Mr. Royce Hellesoe, an employee of the Halifax Regional Municipality (HRM), has filed a complaint with the Nova Scotia Human Rights Commission (the Commission) with respect to allegations of discrimination in his employment. The applicant Commission seeks an order compelling the respondent, HRM, to produce certain information pursuant to an investigation under the *Human Rights Act*. As a preliminary matter, however, it is necessary to determine whether the Commission has jurisdiction to deal with the complaint. The respondent claims that jurisdiction rests exclusively with an arbitrator under the collective agreement. The issue for this decision is the question of jurisdiction.

Background

[3] The Commission is investigating a complaint by Mr. Hellesoe, who claims that he has been subjected to discriminatory treatment at work because he is African-Nova Scotian. He believes that making a complaint to his supervisor or other management would not be worthwhile. The allegations include the use of a racial epithet by a co-worker and, on other occasions, racially discriminatory jokes

being told in his presence and in the presence of supervisors, who also allegedly participated.

[4] Mr. Hellesoe also claims that he has been denied promotions – which went to white employees – despite being the most senior candidate. He says he has applied for several positions since he started working with HRM, securing only one position, which no one else applied for. In one case, he claims, he applied for a position that went to a white seasonal employee. He claims that seasonal employees are not supposed to be given preference over full-time employees under the collective agreement.

[5] Mr. Hellesoe also claims that he was refused compassionate leave to attend the funeral of his aunt, while white employees were allowed leave in similar circumstances. He attended the funeral but was docked pay. This was rectified after the intervention of the union.

[6] The Commission has requested an order pursuant to s. 31 of the Nova Scotia *Human Rights Act* requiring HRM to disclose certain information it claims is relevant to Mr. Hellesoe's complaint, including certain job descriptions,

documentation supporting the qualifications of applicants in certain competitions and letters of reprimand for Mr. Hellesoe and the successful applicants.

The Collective Agreement and the Relevant Legislation

[7] Section 42 of the *Trade Union Act* states:

> 42 (1) Every collective agreement shall contain a provision for final settlement without stoppage of work, by arbitration or otherwise, of all differences between the parties to or persons bound by the agreement or on whose behalf it was entered into, concerning its meaning or violation.
>
> (2) Where a collective agreement does not contain a provision as required by this Section, it shall be deemed to contain the following provision:
>
> > Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration.... The arbitrator shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it.
>
> (3) Every party to and every person bound by the agreement, and every person on whose behalf the agreement was entered into, shall comply with the provision for final settlement contained in the agreement.

[8] Article 15 of the Collective Agreement deals with grievance procedures. It includes a procedure whereby the employer and the union attempt to resolve employment-related issues, and arbitration in the event that the parties are unable to settle their differences. Art. 16.03a provides that "[i]n resolving disputes an arbitrator shall have regard to the real substance of the matters in dispute and the respective merits of the positions of the parties and shall apply principles consistent with the *Trade Union Act* and not be bound by strict legal interpretation of the issue in dispute."

[9] The Collective Agreement further states, at Art. 16.04

> The decision of the Arbitrator shall be final, binding and enforceable on all parties and may not be changed. The Arbitrator shall not have the power to change this agreement or to alter, modify or amend any of its provisions or make any decision contrary to the provisions of this agreement. However, the Arbitrator shall have the power to modify penalties or dispose of a grievance by any arrangement which it deems just and equitable.

[10] The Collective Agreement deals with discrimination and human rights in Article 3, which provides, in part:

> 3.01 The Employer agrees that there shall be no discrimination exercised or practiced with respect to any employee in the matter of hiring, assigning, wage rate, training, upgrading, promotion, transfer, lay-off, recall, discipline,

> classification, discharge or any other action by reason of age, race, creed, color, ancestry, national origin, religion, political affiliations or activity, sexual orientation, gender, marital or parental status, family relationship, place of residence, disability, nor by reason of his/her membership or activity in the Union or any other reason.
>
> 3.02 Any claim by an employee or the union pertaining to violation of ... the Human Rights Act ... or any other labor relations legislation may be the subject of a grievance which shall be processed in accordance with the Grievance Procedure. The effect of this clause shall not be to reduce the rights of the employee or the Union as prescribed by the legislation.

[11] The relevant provisions of the Nova Scotia *Human Rights Act* include section 2, which sets out the purpose of the *Act*, which is to:

> (a) recognize the inherent dignity and the equal and inalienable rights of all members of the human family;
>
> (b) proclaim a common standard for achievement of basic human rights by all Nova Scotians;
>
> (c) recognize that human rights must be protected by the rule of law;
>
> (d) affirm the principle that every person is free and equal in dignity and rights;
>
> (e) recognize that the government, all public agencies and all persons in the Province have the responsibility to ensure that every individual in the Province is afforded an equal opportunity to enjoy a full and productive life and that failure to provide equality of opportunity threatens the status of all persons; and

(f) extend the statute law relating to human rights and to provide for its effective administration.

[12] Section 4 of the *Human Rights Act* defines discrimination. It states:

For the purpose of this Act, a person discriminates where the person makes a distinction, whether intentional or not, based on a characteristic, or perceived characteristic, referred to in clauses (h) to (v) of subsection (1) of Section 5 that has the effect of imposing burdens, obligations or disadvantages on an individual or a class of individuals not imposed upon others or which withholds or limits access to opportunities, benefits and advantages available to other individuals or classes of individuals in society.

[13] Section 5 states, in part:

5 (1) No person shall in respect of

…

(d) employment;

discriminate against an individual or class of individuals on account of

…

(i) race;

...

(k) color;

[14] Pursuant to section 6, ss. 5(1) does not apply in certain circumstances.

Issue

[15] Does the arbitration procedure in the Collective Agreement give the arbitrator exclusive jurisdiction over the issues which are the subject of the complaint to the Human Rights Commission?

Law and Discussion

[16] In *Weber v. Ontario Hydro,* [1995] 2 S.C.R. 929; [1995] S.C.J. No. 59, the Supreme Court of Canada considered whether a mandatory arbitration clause in the Ontario *Labour Relations Act* ousted the court's jurisdiction to hear an employee's tort and Charter claim. McLachlin J. (as she then was), for the majority, described three models of jurisdiction: concurrent, overlapping and exclusive jurisdiction. Under the concurrent model, where an action is recognized by the common law or by statute, it may proceed, notwithstanding that it arises in the employment

context. Although based on the same facts, the proceedings are considered independent because the issues are different. Under the overlapping model, notwithstanding that the facts of a dispute arise out of a collective agreement, the action may be brought if it raises issues that are beyond traditional subject matter of labor law. Under the exclusive jurisdiction model, if the differences between the parties arise from the collective agreement, the claimant must proceed by arbitration and the courts have no power to entertain an action.

[17] McLachlin J. held that to determine whether an arbitrator has exclusive jurisdiction, it is necessary to determine whether the dispute arises out of the collective agreement. This requires a consideration of two issues: the dispute and the ambit of the collective agreement. She stated:

> 52 In considering the dispute, the decision-maker must attempt to define its "essential character".... The fact that the parties are employer and employee may not be determinative. Similarly, the place of the conduct giving rise to the dispute may not be conclusive; matters arising from the collective agreement may occur off the workplace and conversely, not everything that happens on the workplace may arise from the collective agreement.... Sometimes the time when the claim originated may be important.... In the majority of cases the nature of the dispute will be clear; either it had to do with the collective agreement or it did not. Some cases, however, may be less than obvious. The question in each case is whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the collective agreement.

* * *

> 54 This approach does not preclude all actions in the courts between employer and employee. Only disputes which expressly or inferentially arise out of the collective agreement are foreclosed to the courts.... Additionally, the courts possess residual jurisdiction based on their special powers.... [Emphasis added.]

[18] In determining that "mandatory arbitration clauses such as s. 45(1) of the Ontario Labour Relations Act generally confer exclusive jurisdiction on labour tribunals to deal with all disputes between the parties arising from the collective agreement," McLachlin J. relied heavily upon *St. Anne Nackawic Pulp & Paper Co. v. Canadian Paper Workers Union, Local 219*, [1986] 1 S.C.R. 704, where the Court, per Estey J., said, at pp. 718-719:

> The collective agreement establishes the broad parameters of the relationship between the employer and his employees. This relationship is properly regulated through arbitration and it would, in general, subvert both the relationship and the statutory scheme under which it arises to hold that matters addressed and governed by the collective agreement may nevertheless be the subject of actions in the courts at common law. . . . The more modern approach is to consider that labour relations legislation provides a code governing all aspects of labour relations, and that it would offend the legislative scheme to permit the parties to a collective agreement, or the employees on whose behalf it was negotiated, to have recourse to the ordinary courts which are in the circumstances a duplicative forum to which the legislature has not assigned these tasks.

[19] *Weber* dealt with a jurisdictional competition between the courts and a statute-mandated labour relations scheme. In *Quebec (Commission des droits de la*

personne et des droits de la jeunesse) v. Quebec (Attorney General), [2004] 2 S.C.R. 185; 2004 SCC 39 (“*Morin*”), the competition was between two statutory tribunals, one concerning with labour disputes, the other with human rights. McLachlin C.J.C., for the majority, stated:

> 11 *Weber* holds that the model that applies in a given situation depends on the governing legislation, as applied to the dispute viewed in its factual matrix. In *Weber*, the concurrent and overlapping jurisdiction approaches were ruled out because the provisions of the Ontario *Labour Relations Act* ..., when applied to the facts of the dispute, dictated that the labour arbitrator had exclusive jurisdiction over the dispute. However, *Weber* does not stand for the proposition that labour arbitrators always have exclusive jurisdiction in employer-union disputes. Depending on the legislation and the nature of the dispute, other tribunals may possess overlapping jurisdiction, concurrent jurisdiction, or themselves be endowed with exclusive jurisdiction.... As stated in *Weber* [at para. 53], "[b]ecause the nature of the dispute and the ambit of the collective agreement will vary from case to case, it is impossible to categorize the classes of case that will fall within the exclusive jurisdiction of the arbitrator."
>
> * * *
>
> 14 ... [A]s we have seen, there is no legal presumption of exclusivity *in abstracto*. Rather, the question in each case is whether the relevant legislation applied to the dispute at issue, taken in its full factual context, establishes that the labour arbitrator has exclusive jurisdiction over the dispute.
>
> 15 This question suggests two related steps. The first step is to look at the relevant legislation and what it says about the arbitrator's jurisdiction. The second step is to look at the nature of the dispute, and see whether the legislation suggests it falls exclusively to the arbitrator. The second step is logically necessary since the question is whether the legislative mandate applies to the particular dispute at issue. It facilitates a better fit between the tribunal and the dispute and helps "to ensure that jurisdictional issues are decided in a manner that is consistent with the

> statutory schemes governing the parties", according to the underlying rationale of *Weber*.... [Emphasis added.]

[20] In *Morin* the majority held that the Québec *Charter* (the *Charte des droits et libertés de la personne*) gave a Human Rights Tribunal a broad jurisdiction over human rights matters. This suggested concurrent jurisdiction, at least. The Chief Justice continued:

> 20 The second step is to look at the dispute in issue to determine whether it falls within the ambit of the arbitrator's exclusive jurisdiction. We must look at the dispute in its full factual context. Its legal characterization -- whether it is a tort claim, a human rights claim, or a claim under the labour contract -- is not determinative. The question is whether the dispute, viewed in its essential character and not formalistically, is one over which the legislature intended the arbitrator to have exclusive jurisdiction....

[21] The Chief Justice concluded that the real dispute between the parties arose from the fact that the collective agreement treated younger and less experienced teachers less favorably than more senior teachers. It was essentially a dispute as to how the collective agreement allocated reduced resources among union members. The dispute was not one over which an arbitrator had exclusive jurisdiction; it did not arise out of the operation of the collective agreement, but out of pre-contractual negotiations. The issue was “whether the process leading to the adoption of the

alleged discriminatory clause and the inclusion of that clause in the agreement violates the Quebec *Charter*, rendering it unenforceable" (para. 24).

[22] Among the arguments in *Morin*, it was suggested that "the Tribunal should not have taken jurisdiction because the complainants could have asked their unions to 'grieve' the alleged violation under the collective agreement" (para. 27). Among her reasons for rejecting this position, the Chief Justice commented:

> 28 ... the unions were, on the face of it, opposed in interest to the complainants, being affiliated with one of the negotiating groups that made the allegedly discriminatory agreement. If the unions chose not to file a grievance before the arbitrator, the teachers would be left with no legal recourse (other than possibly filing a claim against their unions for breaching the duty of fair representation)....

[23] Furthermore, she wrote, even if the union pursued a grievance, the arbitrator would not have jurisdiction over all of the parties to the dispute, as there were some persons involved who had no connection to the union. She concluded:

> 30 Finally, because the complainants' general challenge to the validity of a provision in the collective agreement affected hundreds of teachers, the Human Rights Tribunal was a "better fit" for this dispute than the appointment of a single arbitrator to deal with a single grievance within the statutory framework of the *Labour Code*. In these circumstances the complainants cannot be faulted for taking their claim to the Human Rights Commission rather than to the union with the hope (but no guarantee) of having it filed as a grievance before a labour arbitrator.

[24] The matter was remitted to the Human Rights Tribunal.

[25] In *Cadillac Fairview Corp. v. Saskatchewan (Human Rights Commission)* (1999), 173 D.L.R. (4th) 609, the Saskatchewan Court of Appeal held that the Human Rights Commission had concurrent jurisdiction with an arbitrator. Two employees, who were covered by a collective agreement, filed a complaint with the Human Rights Commission, alleging that they had been sexually harassed by a supervisor. They did not file a grievance under the collective agreement, which prohibited sexual discrimination. The human rights legislation provided for a procedure similar to that under the Nova Scotia *Human Rights Act*. The Court considered the essential nature of the dispute:

> 26 The issue in this case is whether an alleged violation of the [*Human Rights*] *Code* can, in its essential character, be considered a difference or a dispute under s. 25 of the [*Trade Union*] *Act*. In other words, can the allegation of a violation of a protected right under the *Code* be characterized in its essential nature as a difference which arises out of the collective agreement? [...]
>
> 27 *Weber*, in my opinion, did not go so far as to state that any rights created by statute that affect employment rights must of necessity arise out of the collective agreement and can only be dealt with by arbitration. Indeed *Gendron v. Supply and Services Union*, P.S.C.A.21 makes it clear there are exceptions as to when exclusive jurisdiction arises under the *Canada Labour Code* when dealing with an issue arising out of a breach of an obligation under the *Canadian Human*

Rights Code where there is also a common law duty. In deciding that common law jurisdiction was ousted the Court stated:

> A different conclusion may also be warranted where it is not clear that the statute exclusively covers the breach. In other instances, such as in the context of human rights violations, while the statute might apply, the breach may not be properly characterized exclusively as a labour relations matter. In these circumstances jurisdiction may be grounded elsewhere.

[26] The Court considered in detail the significance of the fact that human rights legislation was involved:

> 28 The right which was allegedly violated in this case is a fundamental human right which employees and the union need not bargain and cannot contract out of.... It is a fundamental right which forms part of every employee's contract of employment and is enforceable under the *Code*. It is a right which would not have existed in the absence of the *Code*.
>
> 29 The Supreme Court of Canada has stated that when human rights legislation comes into conflict with other, more specific legislation, the provisions of the *Code* prevail. Next to constitutional law, human rights provisions are more important than all other laws. They have been defined as quasi constitutional rights and statutes. They are not treated as laws of general application but rather as fundamental laws. Unless the legislature has expressly provided otherwise, the *Code* takes precedence over all other laws when there is a conflict.... Section 44 of the *Code* expressly provides that where there is a statutory conflict, the *Code* takes precedence unless expressly excluded. If one applies the modern approach to statutory legislation as defined by Driedger there is a clear intention on the part of the legislature that the *Code* is to take priority over other statutory rights.
>
> 30 In my opinion, the fact the parties have included a covenant to comply with the *Code* in the collective agreement cannot change the essential character of the dispute. Fundamentally, the essential nature of this complaint is a human rights violation and not a dispute arising out of the collective agreement dealing

> with the interpretation, application or violation of the collective agreement as contemplated by s. 25.

[27] As to the ambit of the collective agreement, the Court concluded as follows:

> 33 In my opinion the ambit of the collective agreement does not affect the finding that the essential nature of the dispute is a human rights violation and not one which only involves a dispute by the parties concerning the application, violation or interpretation of the collective agreement. This is particularly evident when one takes into account the public interest component of the complaint as well and the wide powers granted under the *Code* to redress a violation of the rights guaranteed under the *Code*, and further to award damages or otherwise resolve the question of compensation for the violation of the guaranteed right.
>
> 34 In conclusion the essential nature of the dispute in this case is a complaint under the *Code* alleging a violation of a protected right not to be discriminated against on the basis of sex. It is not in its essential character a complaint arising out of the employment relationship under the collective agreement. While it is true that the employees' employment rights were inferentially affected because the alleged act of discrimination was addressed by the collective agreement, the mere fact that an alleged violation of the *Code* occurred in a place of employment rather than in some other setting is not determinative.

[28] Leave to appeal the *Cadillac Fairview* decision to the Supreme Court of Canada was denied: [1999] S.C.C.A. No. 492.

[29] In *Canpar Industries v. International Union of Operating Engineers, Local 115* (2003), 234 D.L.R. (4th) 221, the British Columbia Court of Appeal dealt with jurisdiction in the context of a labor dispute was centered on the anti-

discrimination provision of the *Human Rights Code*. The collective agreement was silent as to the application of human rights principles. The issue was whether the matter was within the jurisdiction of an arbitrator or the Human Rights Tribunal. The Court held that although the collective agreement was silent on antidiscrimination principles, the arbitrator could still hear the complaint.

[30] In *Brown v. Westfair Foods Ltd.* (2002), 213 D.L.R. (4th) 715 (Sask. Q.B.) the court concluded that an arbitrator had jurisdiction to hear a dispute initiated by the union on behalf of an employee after the employer terminated a modified work program. The arbitrator held that the essential nature of the dispute was the extent to which the employer had a duty to accommodate the employee's disability. The collective agreement prohibited the employer from discriminating on the basis of disability and imposed a duty to accommodate the employee's disability up to the point of undue hardship. The Court commented on the jurisdiction of an arbitrator or other statutory tribunal to address a dispute arising out of the employment relationship, particularly where the human rights code is involved:

> [70] The competing forums in this case are not labour arbitrator versus court ... or statutory tribunal versus court.... The contest in this case is between labour arbitrator and statutory tribunal -- specifically, tribunals established under *The Labour Standards Act* and/or the *Human Rights Code*. If it has been judicially

> determined that one of those statutory tribunals has exclusive jurisdiction to deal with complaints which, in their essential nature, relate to an employer's failure to accommodate an employee's disability, then the respondent arbitrator had no jurisdiction to consider Mr. Brown's grievance.

[31] The Court went on to review several Saskatchewan cases on the competing jurisdictions of labour arbitrators and statutory tribunals. The Court quoted paragraphs 31 and 33 of *Cadillac Fairview*:

> [75] In *Cadillac Fairview* ... a unionized employee covered by a collective agreement submitted complaints to the Human Rights Commission alleging sexual harassment and discrimination in employment on the basis of sex. The Court of Appeal decided that the right being pursued by the complaint related to a fundamental human right conferred by a statute of a "quasi-constitutional" nature and that a board of inquiry established under the *Human Rights Code* had concurrent jurisdiction to deal with it. Vancise J.A. stated at pp. 621-22:
>
> > [31] One must not lose sight of the fact that the terms of the collective agreement itself can play an important role in the determination of whether the jurisdiction of the court has been ousted in favour of an arbitrator. The fact that parties have included an anti-discrimination clause in the collective agreement does not alter the fundamental nature of the dispute or have the effect of extending the scope of the arbitrator's jurisdiction. It may play a role in determining whether the statutory tribunal would decide to hear the complaint but it cannot affect the determination of the essential nature of the dispute or the question of jurisdiction. The essential issue is whether this complaint is a dispute between the parties with respect to the meaning, application or alleged violation of the collective agreement. To find that it is, with the result that the dispute must be arbitrated, would permit the parties to contract out of the *Code*, something they cannot do.
> >
> > . . . . .

> [33] In my opinion the ambit of the collective agreement does not affect the finding that the essential nature of the dispute is a human rights violation and not one which only involves a dispute by the parties concerning the application, violation or interpretation of the collective agreement. This is particularly evident when one takes into account the public interest component of the complaint as well and the wide powers granted under the *Code* to redress a violation of the rights guaranteed under the Code, and further to award damages or otherwise resolve the question of compensation for the violation of the guaranteed right.

[32] The Court went on to discuss the Supreme Court of Canada decision in *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, and concluded:

> [80] Given the judicial authorities cited above, it is fair to say that it remains unclear in any particular case whether a statutory tribunal or an arbitrator has exclusive, paramount, or concurrent jurisdiction over a dispute in a unionized workplace. If the contest is between court action and labour arbitration, the exclusive forum is labour arbitration.... Paradoxically, if the contest is between court action and a statutory tribunal other than labour arbitration, the court has a shared or concurrent jurisdiction with the statutory tribunal.... Finally, if the contest is between labour arbitration and another statutory tribunal (as it is in this case), a tribunal's jurisdiction over a matter will be exclusive if that is what the legislature intended.... On the other hand, the jurisdiction of a tribunal established under the *Human Rights Code* in respect of "fundamental human rights" is concurrent..., the jurisdiction of a tribunal established under *The Occupational Health and Safety Act, 1993* in respect of rights related to workplace safety is "paramount" ... and the jurisdiction of a tribunal established under *The Labour Standards Act* in respect of other employment rights is concurrent if, in the court's view, the employee cannot succeed by grieving under the collective agreement....
>
> [81] I conclude that the exclusive jurisdiction to hear and determine a dispute, the essential nature of which is an employer's duty to accommodate an employee's disability, has not been conferred upon one statutory tribunal to the exclusion of all others. If the dispute is otherwise within the ambit of the collective agreement,

> as I am satisfied in this case it is, an arbitrator has at least concurrent jurisdiction to address it.

[33] The Court added, at paragraph 84, that by having the union file a grievance, the employee "decided to access the remedial powers of an arbitrator under *The Trade Union Act* rather than rely upon adjudicative tribunals established under the *Human Rights Code* or *The Labour Standards Act*. In essence, his grievance claimed that the collective agreement provided essentially the same protections as the legislation.... [T]he complainant's choice of forum should be respected" (para. 84).

[34] The Court considered whether arbitration was an appropriate forum for adjudicating the dispute, observing that "[a]rbitrators have assumed broader responsibilities and more comprehensive powers in resolving disputes in the unionized workplace, particularly in respect of discrimination by employers on prohibited grounds"; furthermore, arbitrators had "been given the encouragement and the responsibility to utilize human rights principles, and in particular the duty to accommodate, in industrial settings" (paras. 85-86). As such, "courts should remain sensitive to developments of this kind to ensure that their decisions remain

connected to labour relations realities in the unionized workplace....” (para. 87). The Court held that arbitration was an appropriate forum for the dispute.

[35] The Court went on to consider the circumstances in which adjudicators should defer to other forums, in view of the principle that “wherever possible employment issues should be comprehensively dealt with in one forum only” (para. 88). The Court noted:

> [90] Labour relations boards defer to a labour arbitrator if the essential nature of the complaint arises out of the collective agreement and if an arbitrator can provide complete relief in response to the complaint. The board will hear the complaint if arbitration is unavailable or unsuitable for any reason such as a remedial limitation. The board's deferral does not prejudice the applicant's right to bring the matter back to the board if the arbitrator declines jurisdiction. By taking that approach the board ensures that it does not abdicate its statutory responsibility while recognizing and promoting arbitration as the statutorily mandated scheme for the resolution of employer/ employee disputes....
>
> [91] The deferral approach has not been confined to labour relations boards and is not revolutionary. It was recommended by Professors Swan and Swinton in 1983, when they pointed out the need for human rights adjudicators to develop doctrines of deference to the decisions of other tribunals based on the same factual situations and commended the deferral approach taken by Professor Kerr in *Singh v. Domglas Ltd.* (1980), 2 C.H.R.R. D/ 285 (Ont. Bd. Inq.). (See K. Swan and K. Swinton, "The Interaction of Human Rights Legislation and Labour Law", in *Studies in Labour Law* (Toronto: Butterworths, 1983) 111 at p. 141.)

[36] The Court pointed out that the deferral approach had been applied by the Labour Standards Officer, who deferred to arbitration (para. 93), and noted that

recent amendments to the *Human Rights Code* contemplated a "deferral" approach by permitting a tribunal established under that *Act* to defer to another proceeding (para. 94). The Court concluded:

> [95] Thus, although the *Human Rights Code* involves "quasi-constitutional human rights" which take precedence over all other rights and statutes, s. 27.1 of the *Human Rights Code* ... is a statement by the legislature that deferral by tribunals established under that Act to another adjudicator may be the most appropriate approach....

[37] There is no provision in the Nova Scotia *Human Rights Act* providing for deferral to an arbitrator or to other statutory tribunal.

[38] In *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667; [2005] S.C.J. No. 28, the respondent alleged that he had been discriminated against by his employer, the Speaker of the House of Commons. He was initially terminated because he refused to assume new duties under a changed job description, and refused alternative employment. He was reinstated as the result of a grievance under the *Parliamentary Employment and Staff Relations Act* (PESRA). The Board of Adjudication found that there was insufficient evidence to support his allegation of discrimination. The Supreme Court of Canada ruled that nothing in the

complainant took it out of the employment context. Binnie J., writing for the Court, stated:

> 83 PESRA confers labour relations' jurisdiction over employees like the respondent Vaid, the subject matter of his grievance (discrimination) and the remedial powers to resolve such a grievance. The issue is whether PESRA's system of redress, which runs parallel to the enforcement machinery provided under the *Canadian Human Rights Act*, manifests a parliamentary intention to oust the dispute resolution machinery of the Canadian Human Rights Commission. I conclude that it does.

[39] Binnie J. stated that the fact that the respondent claimed human rights violations did not automatically steer the case to the Canadian Human Rights Commission because "one must look not to the legal characterization of the wrong, but to the facts giving rise to the dispute" (para. 93, citing *Weber* at para. 49 and *St. Anne Nackawic Pulp & Paper Co. v. Canadian Paper Workers Union, Local 219*, [1986] 1 S.C.R. 704, at 721). He wrote:

> 95 It is true, as the respondents submit, that PESRA is essentially a collective bargaining statute rather than a human rights statute. The substantive human rights norms set out in the *Canadian Human Rights Act* are not set out in PESRA. Nevertheless, PESRA permits employees who complain of discrimination to file a grievance and to obtain substantive relief. I do not suggest that all potential claims to relief under the *Canadian Human Rights Act* would be barred by s. 2 of PESRA, but in the present type of dispute, there is clearly a measure of duplication in the two statutory regimes and the purpose of s. 2 is to avoid such duplication. Parliament has determined that grievances of employees covered by PESRA are to be dealt with under PESRA. A grievance that raises a human rights

issue is nevertheless a grievance for purposes of employment or labour relations....

* * *

97 The respondents also contend that while PESRA may be able to respond to Mr. Vaid's particular complaint of workplace discrimination and harassment, the Canadian Human Rights Tribunal is better placed than a PESRA adjudicator to address broader issues such as systemic discrimination, including compliance with the pay equity requirements of s. 11 of the *Canadian Human Rights Act*. They cite *Canada (Human Rights Commission) v. Canadian Airlines International Ltd.*, [2004] 3 F.C.R. 663, 2004 FCA 113, where this provision of the Canadian Human Rights Act was considered. That is not this case. Such an argument raises a different issue in a different context. In *Morin* itself, the terms of the collective agreement were under attack as discriminatory. The dispute was therefore allowed to proceed before the Quebec Human Rights Tribunal. In *Charette*, the nature of the dispute was different, the statutory language more specific, and the proceedings before the Quebec Human Rights Tribunal were stopped. Instead, the dispute was referred to the Commission des affaires sociales. This is not an area of the law that lends itself to over generalization.

98 In this case, we are not dealing with an allegation of systemic discrimination. We are dealing with a single employee who says he was wrongfully dismissed against a background of alleged discrimination and harassment. A different dispute may involve different considerations that may lead to a complaint properly falling under the jurisdiction of the Canadian Human Rights Commission. But that is not this case.

99 The respondents also submit that, under s. 41(1) of the *Canadian Human Rights Act*, it is for the Commission not Parliament to determine whether "the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act". However, this approach presupposes that the enforcement machinery of the *Canadian Human Rights Act* applies. If, as I conclude, it has been ousted by s. 2 of PESRA with respect to this dispute, then s. 41, along with the other enforcement mechanisms of the *Canadian Human Rights Act*, simply do not apply to the respondent Vaid's present complaint.

> 100 In the result Mr. Vaid's workplace complaints ought to have been considered in 1997 as they were (with partial success) in 1995, by way of a grievance under PESRA.

[40] A jurisdictional competition between a labour arbitration board and a human rights commission was recently addressed by the Alberta Court of Appeal in *Amalgamated Transit Union, Local 583 v. Calgary (City)*, 2007 ABCA 121 (*ATU*). Referring to *Morin*, Paperny J.A., writing for the Court, stated that "[r]ecent jurisprudence from the Supreme Court of Canada directs us to consider: first, the relevant legislation conferring jurisdiction on the competing tribunals; and second, the nature of the dispute, taken in its full factual context" (para. 2).

[41] In *ATU* the relevant legislation was the Alberta *Labour Relations Code* and the *Human Rights, Citizenship and Multiculturalism Act*. An employee of the City, who was a member of the appellant union, was terminated. The union grieved the dismissal. The grievance did not refer to a clause in the collective agreement regarding discrimination and harassment, although it did refer to "all other applicable clauses." The employee subsequently filed a human rights complaint, alleging discrimination and harassment. At the arbitration hearing, the employer, over the objection of the union, asked the Board to deal with the human rights complaint in addition to the grievance. Paperny J.A. wrote:

> 9 We are left to speculate as to why the Union determined not to include the alleged discrimination as part of its grievance. However, several reasons why a union might make such a choice were discussed during the hearing: for example, if it considered the human rights allegations to be without merit; if it found itself in a conflict vis-à-vis allegations made against another bargaining unit member; if it had limited resources to devote to such matters and did not perceive the grievance to further the interests of the bargaining unit as a whole. There is no suggestion that the Union has breached its duty of fair representation in deciding to frame the grievance in this manner, and we are not in a position to go behind that decision on this appeal.
>
> 10 In its decision dated October 5, 2004, the arbitration board held that the employee's allegations of discrimination, as set out in her human rights complaint, could not be meaningfully nor conveniently separated from the termination of her employment. The board took the view that it had the power and the responsibility to implement and enforce the substantive rights and obligations of the *Human Rights, Citizenship and Multiculturalism Act* (the "*Human Rights Act*"), citing the Supreme Court of Canada decision in *Parry Sound (District) Social Services Administration Board v. Ontario Public Service Employees Union, Local 324*, 2003 SCC 42, [2003] 2 S.C.R. 157. The arbitration board ruled that it had the exclusive jurisdiction to deal with the employee's termination grievance as well as her human rights complaint.

[42] On judicial review the Chambers judge held that the arbitration board could not exercise jurisdiction over a human rights complaint that was not brought before it by the union. In the alternative, the Chambers judge held that the Board could not oust the jurisdiction of the Human Rights Commission (paras. 11-13).

[43] On appeal, Paperny J.A. emphasized the distinction between cases dealing with jurisdictional competition between courts and arbitrators (as in *Weber*), and

those dealing with competing tribunals (as in *ATU* and the instant case). The often-stated need to protect the exclusive jurisdiction of arbitrators, as against the general courts, were to be treated with caution were the competition was between different statutory dispute-resolution mechanisms:

> 23 ... The legislative intent in enacting labour relations regimes and creating arbitration procedures must be respected. In my view, however, it is unwise simply to import the principles developed in cases involving a contest between the courts and arbitration, including the inherent preference for the exclusive jurisdiction of arbitrators often apparent in those cases, into a situation where the court must consider two statutory regimes. In the latter situation there are two legislative intents to consider, not one. If we were to accept exclusive jurisdiction as a starting point, we would run the risk of giving the jurisdictional advantage to one statutory tribunal over another and thereby reducing the efficacy of the second statutory regime. That would be especially problematic where the competing regime involves human rights legislation and all that its quasi-constitutional nature implies.

[44] Paperny J.A. observed that legislative intent remains the "primary consideration" in determining which statutory tribunal should govern a dispute. However, "[w]here there are two or more legislative schemes creating two or more tribunals that could potentially govern the dispute, the court must consider to which of the competing regimes the legislature intended to grant jurisdiction. One does not start from the premise that the arbitrator is the preferred forum" (para. 32).

[45] Paperny J.A. went on to apply the two-part analysis set out in *Morin*. This required a consideration of the legislative purpose and wording of the respective statutes, followed by a consideration of the nature of the dispute. On the question of legislative purpose, both regimes reflected "[i]mportant societal goals." The arbitration board, furthermore, clearly had the jurisdiction to deal with "human rights issues arising out of the collective agreement," as was established in *Parry Sound* (paras. 44-46). However, Paperny J.A. said:

> 46 ... It does not follow that the arbitration board's jurisdiction over such issues is necessarily exclusive, however. The Supreme Court of Canada in *Parry Sound* expressly declined to decide whether the jurisdiction of the Human Rights Commission was ousted by that of the arbitration board.... That is the question before us on this appeal. On its face, the employee's human rights complaint falls squarely within the mandate of the Commission to determine complaints of discrimination in employment practices: *Human Rights Act*, s. 7.
>
> 47 The human rights issues raised by the employee in her complaint to the Commission could, therefore, fall under the jurisdiction of either tribunal. The employer argues that the arbitration board is the appropriate forum, and that we should be guided by the labour relations goal of workplace stability achieved through the expeditious resolution of disputes in a single forum. The employee and the Union espouse the goal of universal access to human rights legislation. Both goals cannot be achieved in this case, and it is up to the legislature to establish which is to prevail. We must look to the specific wording of Alberta's legislation to assess whether either scheme indicates that the tribunal it creates is intended to have exclusive jurisdiction over the human rights issues raised by this dispute.

[46] Moving on to consider the wording of the respective statutes, Paperny J.A. noted that “clear exclusivity clauses” had been important to the conclusions reached in *Weber* and *Vaid* (para. 48), and compared the wording in those cases to that in the statues before the Court. To begin with *Vaid*, the Alberta *Labour Relations Code* had no equivalent to s. 2 of the PESRA, which stated that “nothing in any other Act of Parliament that provides for matters similar to those provided for under this Act ... shall apply...”. The clauses at issue in *Weber* and *Morin* were closer in wording to the Alberta provision. In *Weber*, the relevant provision was s. 45(1) of the Ontario *Labour Relations Act*:

> 45(1) Every collective agreement shall provide for the final and binding settlement by arbitration ... of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement ... [Emphasis by Paperny J.A.]

[47] In *Morin*, the relevant provisions of the Quebec *Labour Code* were ss. 100 and 1(f), which stated, respectively:

> 100 Every grievance shall be submitted to arbitration in the manner provided in the collective agreement if it so provides and the certified association and the employer abide by it; otherwise it shall be referred to an arbitrator chosen by the parties or, failing agreement, appointed by the Minister ..."

> 1(f) "grievance": <u>any disagreement</u> respecting the interpretation or application of a collective agreement. [Emphasis by Paperny J.A.]

[48] Paperny J.A. suggested that the language of the Alberta *Labour Relations Code* was weaker than the Ontario and Quebec provisions. The Alberta *Code* stated:

> 135 Every collective agreement shall contain a method for the settlement of differences arising
>
> (a) as to the interpretation, application or operation of the collective agreement,
>
> (b) with respect to a contravention or alleged contravention of the collective agreement, and
>
> (c) as to whether a difference referred to in clause (a) or (b) can be the subject of arbitration between the parties to or persons bound by the collective agreement.
>
> 136 (a) If a difference arises between the parties to or persons bound by this collective agreement as to the interpretation, application, operation or contravention or alleged contravention of this agreement, ... the parties agree to meet and endeavour to resolve the difference.
>
> (b) If the parties are unable to resolve a difference referred to in clause (a), either party may notify the other in writing of its desire to submit the difference to arbitration.

...

> (g) The arbitrator shall inquire into the difference and issue an award in writing, and the award is final and binding on the parties and on every employee affected by it.

[49] Paperny J.A. held that “clearer and more explicit language would be needed to oust the jurisdiction of the Commission over all human rights issues that arise in a unionized workplace” (para. 57). She added that this view was supported by the provisions of the *Human Rights Act*:

> 58 As noted above, the Commission has a broad mandate to promote compliance with the *Human Rights Act* (s. 16), a mandate that is achieved in part by granting to all persons the right to make a complaint under the *Act* (s. 20). As was pointed out by the chambers judge, the *Act* contains a primacy clause; section 1 provides that every law of Alberta is inoperative to the extent it authorizes or requires the doing of anything prohibited by the *Act*. This is in keeping with the generally accepted principle that human rights legislation is of a special, quasi-constitutional nature and that parties may not contract out of its application....
>
> 59 The Supreme Court has recently stated that it is essential to recognize that human rights codes are not only fundamental, quasi-constitutional law, but also that, like the *Canadian Charter of Rights and Freedoms*, they are the "law of the people". As such, they must be given expansive meaning and offered accessible application: *Tranchemontagne v. Ontario (Director, Disability Support Program)*, 2006 SCC 14, [2006] 1 S.C.R. 513 at para. 33.
>
> 60 Moreover, unlike the Quebec legislation at issue in *Morin*, the Alberta *Human Rights Act* does not contain a deferral clause that would allow the Commission to stop acting on behalf of a complainant in circumstances where the complainant has sought a remedy elsewhere. I agree with the chambers judge that

> the legislative scheme suggests that the Commission has jurisdiction over human rights complaints arising in the workplace, and retains jurisdiction even when the complainant's union has filed a grievance arising out of the same set of facts. The chambers judge did not have the benefit of the Supreme Court's decision in *Tranchemontagne*, which further supports his conclusion. In that case, the lack of authority by a tribunal to decline jurisdiction over a matter conclusively established that it could not avoid considering an appeal brought before it.
>
> 61 The wording of the exclusivity clause in the Alberta *Labour Relations Code*, the clear legislative intent that all persons should have access to the complaints procedure under the *Human Rights Act*, and the lack of a deferral clause in that Act, all lead to the conclusion that it was not the intent of the Alberta legislature that either labour arbitration boards or the Commission should have jurisdiction over all human rights issues that arise in the unionized workplace to the exclusion of the other tribunal.

[50] At the second stage of the analysis, Paperny J.A. held that the employee's grievance in respect of her termination arose out of the "interpretation, application or operation of the collective agreement", but that the arbitration board erred in concluding that it had exclusive jurisdiction over the dispute, including the human rights aspect, which the union had not grieved. There were, in fact, two separate disputes:

> 65 Because of the way the grievance has been framed by the Union, there is not a single dispute here, but two separate disputes. It is the grieving party, in this case the Union, that defines the grievance, not the board and not the responding party. The arbitration board's decision to take jurisdiction over the human rights complaint does not compel the Union to put forward evidence and argument in support of the discrimination allegations. It is the Union's right not to take a grievance. Even taking into account the Union's duty of fair representation, it has a certain amount of latitude in what grievance it chooses to bring. The situation is complicated from the Union's perspective by the fact that some of the employee's

> allegations of discrimination are made against another member of the bargaining unit, to whom the Union also owes a duty.

[51] On this point Paperny J.A. referred to *Morin*, and stated:

> 67 The application of the exclusive jurisdiction model is not appropriate here, as it would effectively leave the unionized employee without a forum in which to air her discrimination allegations. This Court has held that a human rights tribunal cannot be precluded from considering a complaint of discrimination where the issue has not been fully dealt with in a labour arbitration: *Saggers v. Calgary (City)*, [2000] A.J. No. 1143, 2000 ABCA 259. That case was decided before the Supreme Court of Canada's decision in *Parry Sound* made it clear that arbitration boards have the power to apply human rights legislation, and the result was influenced by the finding that the arbitration board was not empowered to grant a remedy on the ground of discrimination based on mental disability. Nevertheless, the concern expressed by this Court that an individual not be left without a forum in which to raise allegations of discrimination remains valid in the circumstances of this case.
>
> 68 It is the Union's right not to take a grievance but that does not remove the employee's right to access the human rights regime, unless the legislature clearly states otherwise. Ultimately, we must be guided by the legislation. The legislative intent revealed by the *Human Rights Act* is to grant to all Albertans access to human rights protection. In the absence of a clear indication to the contrary in the *Labour Relations Code*, I cannot conclude that the intent of the legislature was effectively to remove that right of access from unionized employees. Where neither applicable legislative regime expressly precludes access to the other forum, and particularly where, as here, one of those fora is not entitled to decline to hear a matter, the jurisdiction over the matter is concurrent. Both tribunals have jurisdiction over the human rights issues raised by these disputes. [Emphasis added.]

[52] The result was that there was a possibility of multiple proceedings, which would be regulated by way of res judicata and issue estoppel. While the process

would therefore be “less expeditious than the employer would like. However, until the legislature says otherwise, efficiency alone is not a reason to restrict access to the human rights complaints process” (para. 69).

Conclusion

[53] The test outlined by the Supreme Court of Canada in *Morin* requires the following:

> 15 ... The first step is to look at the relevant legislation and what it says about the arbitrator's jurisdiction. The second step is to look at the nature of the dispute, and see whether the legislation suggests it falls exclusively to the arbitrator. The second step is logically necessary since the question is whether the legislative mandate applies to the particular dispute at issue. It facilitates a better fit between the tribunal and the dispute and helps "to ensure that jurisdictional issues are decided in a manner that is consistent with the statutory schemes governing the parties", according to the underlying rationale of *Weber* ...

[54] The *Morin* analysis, then, requires a consideration of the relevant provisions of the *Trade Union Act* and the *Human Rights Act*, in order to establish what they say about jurisdiction. This is followed by a consideration of the nature of the dispute, in order to determine “whether the legislative mandate of one, or both, tribunals applies to that dispute” (*ATU* at para. 42).

[55] The *Trade Union Act* provides:

> 42 (1) Every collective agreement shall contain a provision for final settlement without stoppage of work, by arbitration or otherwise, of all differences between the parties to or persons bound by the agreement or on whose behalf it was entered into, concerning its meaning or violation.
>
> (2) Where a collective agreement does not contain a provision as required by this Section, it shall be deemed to contain the following provision:
>
> > Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration.... The arbitrator shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it.
>
> (3) Every party to and every person bound by the agreement, and every person on whose behalf the agreement was entered into, shall comply with the provision for final settlement contained in the agreement.

[56] As against this, the *Human Rights Act* includes among its purposes the recognition, *inter alia*, that "human rights must be protected by the rule of law" (s. 2(c)), and the extension of "the statute law relating to human rights and to provide for its effective administration" (s. 2(f)). The *Act* prohibits discrimination in respect of employment (s. 5(1)(d)) as well as in respect of "membership in a

professional association, business or trade association, employers organization or employees organization" (s. 5(1)(g)). Discrimination on the basis of race, color or "ethnic, national or aboriginal origin" is prohibited (s. 5(1)(i), (j), (q)). Among the duties of the Human Rights Commission are the administration and enforcement of the *Act* (s. 24(1)(a)). When a complaint is received, the Commission is required to instruct the Director or another officer "to inquire into and endeavour to effect a settlement" providing that the aggrieved person makes a complaint in writing and "the Commission has reasonable grounds for believing that a complaint exists" (s. 29(a)-(b)). Should the matter proceed to a Board of Inquiry, pursuant to s. 34(7) the Board has jurisdiction and authority to determine any question of fact or law or both required to be decided in reaching a decision as to whether or not any person has contravened this Act or for the making or any order pursuant to such decision.

[57] The Board's powers are set out in s. 34(8):

> A board of inquiry may order any party who has contravened this Act to do any act or thing that constitutes full compliance with the Act and to rectify any injury caused to any person or class of persons or to make compensation therefor.

[58] The *Human Rights Act*, then, is of broad scope. It does not appear to explicitly defer to any other tribunals. The *Trade Union Act* clearly provides a

broad jurisdiction to an arbitrator with respect to any difference between the parties "relating to the interpretation, application or administration" of the collective agreement (s. 42). Further, the *Trade Union Act* applies to "all matters within the legislative jurisdiction of the Province except that it does not apply to Her Majesty in right of the Province or to employees of Her Majesty" (s. 4(1)). I am not satisfied that this language amounts to a claim of exclusive jurisdiction over matters otherwise falling under the *Human Rights Act*.

[59] Among the potential pitfalls of concluding that a fact situation such as this one falls exclusively to the jurisdiction of an arbitrator under the *Trade Union Act* is the fact that, as has been pointed out in several cases cited above, this could lead to the Union being required to decide between the competing interests of several members, where the complaint is against other members of the union. As Paperny J.A. noted in *ATU*, there is a risk that a complainant could be left without a remedy, if the union chooses not to proceed by way of arbitration. This problem is not answered by HRM's argument that finding that the Human Rights Commission has jurisdiction where there is a collective agreement in place "would permit complainants to ignore the grievance procedure for the purpose of taking proceedings against individual co-workers." Unlike the situation in *Weber*, this

issue does not arise from the interpretation, application or administration of the collective agreement. The heart of this dispute is the issue of racial discrimination, not necessarily the specific effects of the alleged discrimination. In this regard, it is important to be mindful of the "quasi-constitutional" nature of the *Human Rights Act*.

[60] Despite subsection 42(1) of the *Trade Union Act*, providing for final and binding arbitration relative to employment disputes, I am of the view that the conduct in question has a broader reach than simply an employment dispute. It is my view that given the broad nature of the issue, an arbitrator under the *Trade Union Act* would be no better situated to deal with it than would the Human Rights Commission. In reaching this conclusion I have found the reasoning in *Cadillac Fairview* and *Westfair Foods* persuasive, reinforced by the more recent decision in *ATU v. Calgary*.

[61] I am mindful of Article 3 of the Collective Agreement, which provides that the employer shall not discriminate with respect to employment, including promotion, by reason of race. Article 3.02 provides that any claim by an employee or the union pertaining to a violation of the *Human Rights Act* may be the subject

of a grievance, to be processed in accordance with the procedures set out in the collective agreement. However, it also provides that the effect of that clause “shall not be to reduce the rights of the employee or the union as prescribed by the legislation." It appears that there is a recognition by the union and the city that allegations of racism are not necessarily subsumed in the collective agreement.

[62] The Municipality argues that a finding of concurrent jurisdiction would create a risk of parallel proceedings, which, it suggests, can be avoided by finding exclusive jurisdiction in a single tribunal, as in *Weber*. By this reasoning, a finding of concurrent jurisdiction should never be available, since it will always create the potential for multiple proceedings. The short answer is that the doctrines of *res judicata* and abuse of process are available to prevent a greivor or complainant from relitigating in a different forum. The scope of the Court’s power to prevent relitigation, even where technical rules of estoppel do not apply, was made clear in *Toronto (City) v. CUPE Local 79*, [2003] 3 S.C.R. 77, where Arbour J., for the majority, held that abuse of process is available to prevent relitigation.

[63] The Municipality also suggests that the Human Rights Commission’s resources should not be used in situations where complainants have the benefit of

collective agreements and unions, and that arbitrator's powers should not be narrowly construed. Neither of these arguments necessarily supports the view that an arbitrator has exclusive jurisdiction in this situation. Nor does the claim that the arbitrator's greater expertise in collective agreement issues supports exclusive jurisdiction. As has been noted above, the nature of the dispute here relates more to questions of discrimination than to technical issues of interpretation of collective agreements. I am not convinced that a labour arbitrator has significantly greater expertise to offer than a human rights tribunal in this area.

[64] The essential argument of the Municipality is that the Court should treat this situation as if it were directly analogous to *Weber*. This position does not adequately confront the factual situation, which, in its essential character, relates equally to workplace issues and human rights issues, with two specialized tribunals available. In the circumstances, I am satisfied that there is concurrent jurisdiction between the arbitration mechanisms provided under the *Trade Union Act* and the Human Rights Commission.

[65] Counsel have advised that they have reached agreement on costs. Therefore I need not address that issue.

J.