

Workplace rights

December 1, 2003

The Report: December 2003 vol.24 num.6

by BRUCE WILKINS



Does the collective agreement contain all of the rights that I hold in my relationship with my employer?



No. A recent Supreme Court of Canada decision holds that union members also enjoy the rights that come from other employment-related statutes.

No matter how thick you may think your HSA collective agreement is, it probably does not contain all of the rights that you enjoy in the workplace. In the recent case of *Parry Sound (District) Social Services Administration Board v. Ontario Public Sector Employees' Union, Local 324 [2003]* the Supreme Court of Canada has determined that no matter what a collective agreement says, human rights and other employment related statutes establish a floor beneath which an employer and union cannot contract.

The union in this case fought for a probationary employee who was fired after she went on maternity leave. The union claimed discrimination under the *Ontario Human Rights Code*. The collective agreement stated that the union could not grieve the dismissal of a probationary employee. The employer claimed that the arbitrator had no jurisdiction to hear any grievance from the union.

The court found that the arbitrator did have jurisdiction to hear the human rights complaint because the *Ontario Labour Relations Act* contains a provision which states that an arbitrator has the power "to interpret and apply human rights and other employment related statutes, despite any conflict between those statutes and the terms of the collective agreement." In interpreting this provision, The court held that the legislature intended that an arbitrator would have the power not only to enforce rights in the collective agreement, but also those contained in human rights and other employment related statutes.

This case applies in British Columbia as well, because the *Labour Relations Code* requires labour arbitrators to interpret and apply "any Act intended to regulate the employment relationship of the persons bound by the collective agreement." The BC legislature also demands an arbitrator do this even where there is a conflict between the *Act* and the collective agreement. Indeed, the Supreme Court of Canada says that not only does a labour arbitrator have the power, but also the responsibility, to implement and enforce human rights and other employment related statutes as if they were a part of the collective agreement.

Examples of *Acts* intended to regulate the employment relationship in British Columbia include the *Employment Standards Act*, the *Human Rights Code*, and the *Workers' Compensation Act*.

Remember that just because the collective agreement does not cover your specific right or issue, there may be another employment-related statute containing rights which an arbitrator can interpret and apply. 

Bruce Wilkins is legal counsel for HSA.

Type:

[The Report](#)

- [Print](#)
- [PDF](#)

180 East Columbia
New Westminster, BC V3L 0G7

Website
www.hsabc.org

Telephone 604-517-0994
1-800-663-2017