

Grievance Procedures – An Appropriate Forum For Human Rights Complaints Within A Unionized Workplace



In three recent decisions, the Alberta Human Rights Tribunal (the “Tribunal”) applied its decision in *Grewal v Sofina Foods Inc.*, 2023 AHRC 46 (CanLII) (“*Grewal*”) in upholding three separate complaint dismissals on the basis that grievance procedures will usually be the more appropriate forum for human rights complaints within a unionized workplace.

In *Grewal*, the Tribunal held as follows:

[23] Accordingly, where human rights issues arise out of a dispute under a collective agreement that permits adjudication of human rights issues and where the complainant filed a grievance, the screening decisions should seriously consider the dismissal discretion under sections 21(1)(a)(iv) or 21(2)(iii) of the Act because the complaint is being, has been, will be or should be more appropriately dealt with in another forum or under another Act. **In short, where there is a collective agreement that addresses human rights issues, grievance arbitration will usually be the more appropriate forum.**

[24] Exceptions to that approach will be rare and only in the clearest of cases where the interests of justice demand it. This respects the judicial preference of labour arbitration as the primary dispute resolution mechanism for these issues, ensures efficient use of resources, supports the principles of finality, and avoids inconsistent results from duplicity of proceedings. The Supreme Court in *Horrocks* criticized past practices of human rights commissions for rarely declining to proceed, even when a grievance had been filed on identical issues.[13]

[25] The paramountcy of the Act and the principles underlying it are about substantive rights, not a particular procedure. Labour arbitrators in Alberta usually have authority to apply the Act and many of the leading judicial and quasi-judicial decisions on human rights law are developed out of labour arbitration. [Emphasis added]

In *Bagley v Alberta University of the Arts*, 2024 AHRC 61, the complainant requested a

review of the Director's decision, which dismissed her complaint on the basis that it had no reasonable prospect of success. On review, the Chief of the Commission and Tribunals (the "**Chief**"), by her designate, agreed with the Director and noted that the collective agreement governing the complainant's employment specifically addressed discrimination in the workplace. The Chief held that grievance arbitration will usually be the more appropriate forum and dismissed the complaint on that basis pursuant to the discretionary authority under section 21 of the *Alberta Human Rights Act* (despite the union's withdrawal of the grievance prior to the grievance hearing).¹

In *Blackburn v Edmonton Police Service*, 2024 AHRC 66, the complainant requested a review of the Director's decision, which dismissed his complaint on the basis that it had no reasonable prospect of success. The Chief agreed with the Director's decision, but held that she would have dismissed the complaint as being more appropriately dealt with in another forum. The Chief reiterated the principles set out in *Grewal* and noted that our courts have consistently affirmed there is a preference for labour arbitration where that forum exists for the parties. Noting that there was an outstanding grievance on the identical issues complained of before the Alberta Human Rights Commission (the "**Commission**"), the Chief dismissed the complaint.

Lastly, in *Agadzhanov v Bow Valley College*, 2024 AHRC 73, the complainant requested a review of the Director's decision, which dismissed her complaint on the basis that it was more appropriately dealt with in another forum. Similar to the above cases, the complainant's employment was governed by a collective agreement, which provided that issues of discrimination would be decided by a designated officer whose decision is final and binding. The Chief, by her designate, upheld the Director's decision to dismiss the complaint and noted "*The human rights complaint process is not an appeal mechanism for those unhappy with the outcome of a grievance procedure.*"²

Key Implications

Building on recent court cases and the backlog of cases at the Commission, these decisions and *Grewal* stand for two propositions that should be helpful to employers responding to human rights complaints:

- First, where employment is governed by a collective agreement that contemplates a mechanism to address human rights discrimination, the Commission and Tribunal will usually find that the labour (grievance) forum is the more appropriate forum to address the human rights complaint (even if the matter does not proceed to arbitration or the grievance is withdrawn).
- Second, human rights complaints are not an appeal mechanism for those unhappy with the outcome of a grievance procedure.

Footnotes

1. Of note, McLennan Ross's [Daniel S. Weber](#) was counsel for Alberta University of the Arts.

2. Of note, McLennan Ross's [Timothy Mitchell, K.C.](#) was counsel for Bow Valley College .

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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