

The changing face of Human Rights complaints

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By April Brousseau

The new Human Rights regime will impact both employers and unions in dealing with the system.

On June 30, 2008, the Ontario human rights system will move to a direct access model. This means that individuals will file their complaints* directly to the Human Rights Tribunal of Ontario rather than have the Human Rights Commission act as “gatekeeper” and weed out, settle, or mediate many complaints before the hearing process.

For employee human rights complaints that originate in a unionized environment, this could lead to some significant changes for both employers and unions in how these complaints are now handled.

Potential shift from arbitrations

The current Commission has routinely rejected human rights complaints from unionized employees on the basis that the matter should more appropriately be dealt with under arbitration. As a result, unions have traditionally dealt with human rights complaints through arbitration, where they are guaranteed a hearing, rather than advising the union member to file a human rights complaint.

That will now change. The Tribunal can no longer reject a human rights complaint unless the matter has already been dealt with appropriately in another forum. This means union members may now choose to pursue their complaint before the Human Rights Tribunal instead of using arbitration, and may do so without the support or knowledge of their union. While complaints theoretically could be ongoing in two forums at the same time, complainants in most cases will likely choose one forum or the other.

How this impacts you

The move to a direct access model may impact employers and unions in a few ways:

- **More complaints.** Unionized employees now have another avenue for launching a complaint, and this greater access may well lead to a greater number of complaints. In addition, complaints against unions may escalate as complaints formerly rejected by the Commission on the basis that they should be dealt with elsewhere will now proceed under the new system.
- **More successful complaints.** To help individuals advance their claims, the new human rights regime includes a Human Rights Legal Support Centre that will offer independent human rights-related legal and support services, ranging from advice and support to legal representation for complainants. This resource may lead to much stronger advocacy for plaintiffs in advancing their case.
- **Higher awards.** The monetary remedies available under the new system are substantially different than under the current system. In particular, the \$10,000 limit for damages for mental anguish has been eliminated, with no maximum in place. And because arbitrators have the power to interpret and apply human rights legislation, these broader remedies are available under both the Tribunal and arbitration routes.

While these are a few of the likely changes that will occur under the new human rights system, unforeseen impacts will undoubtedly emerge over time. Just as it took many years to determine the true influence of the Canadian Charter of Rights and Freedoms on individuals after it was introduced, it will take time before a true picture emerges as to how the human rights system in Ontario has evolved.

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