

SUPREME COURT OF CANADA DISMISSES HUMAN RIGHTS COMPLAINTS BECAUSE COMPLAINTS WERE “APPROPRIATELY DEALT WITH IN ANOTHER PROCEEDING”

British Columbia (Workers' Compensation Board) v. Figliola, 2011 SCC 52

The Supreme Court of Canada recently ruled that the British Columbia Human Rights Tribunal could not review matters that had already been decided by the Workers' Compensation Board.

Background

Three injured employees received fixed compensation payments pursuant to the British Columbia Workers' Compensation Board's Chronic Pain Policy. They appealed to the Review Division, arguing that the policy, which set a fixed award for chronic pain, was patently unreasonable, unconstitutional and discriminatory, contrary to the British Columbia *Human Rights Code* (the “Code”). The Review Officer concluded that the Chronic Pain Policy was not discriminatory.

An amendment to the relevant legislation removed the jurisdiction of the Workers' Compensation Board (the “Board”) to apply the *Code*. Therefore, the Workers' Compensation Appeal Tribunal no longer had the jurisdiction to hear an appeal of the Review Officer's decision; however, judicial review remained available.

Instead of seeking to judicially review the Review Officer's decision, the employees filed fresh complaints with the Human Rights Tribunal (the “Tribunal”) in respect of the same subject-matter. The Board brought a motion asking the Tribunal to dismiss the new complaints, arguing that the Tribunal had no jurisdiction and that the complaints had already been appropriately dealt with by the Board's Review Division.

The Tribunal disagreed with the Board and found that the substance of the complaints was not appropriately dealt with in the review process. The Tribunal's decision was set aside on judicial review, but it was restored by the British Columbia Court of Appeal. The Board appealed to the Supreme Court of Canada.

Supreme Court of Canada Analysis

A majority of the Supreme Court of Canada (the “Majority”) focused on whether the complaints ought to be dismissed pursuant to subsection 27(1)(f) of the *Code* because they had already been “appropriately dealt with” by the Review Division. Subsection 27(1)(f) provides:

27 (1) A member or panel may, at any time after a complaint is filed and with or without a hearing, dismiss all or part of the complaint if that member or panel determines that any of the following apply:

...

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(f) the substance of the complaint or that part of the complaint has been appropriately dealt with in another proceeding...

The Majority noted that subsection 27(1)(f) reflects the collective principles underlying the common law doctrines of estoppel, collateral attack and abuse of process, namely the principles of fairness, finality, the avoidance of multiplicity of proceedings and the protection for the integrity of the administration of justice. It stated that, relying on these underlying principles, the Tribunal must ask itself:

1. Whether there was concurrent jurisdiction to decide human rights issues;
2. Whether the previously decided legal issue was essentially the same as what is being complained of to the Tribunal; and
3. Whether there was an opportunity for the complainants or their privies to know the case to be met and have the chance to meet it, regardless of how closely the previous process procedurally mirrored the one the Tribunal prefers or uses itself.

Although the Majority found that subsection 27(1)(f) reflects the collective principles underlying the common law doctrines of estoppel, collateral attack and abuse of process, it emphasized that the provision does not codify the actual doctrines, and does not call for their strict application.

The Majority also emphasized that subsection 27(1)(f) does not invite the Tribunal to “judicially review” another Tribunal’s decision or to reconsider a legitimately decided issue in order to explore whether it might yield a different outcome. The Majority commented as follows:

When an adjudicative body decides an issue within its jurisdiction, it and the parties who participated in the process are entitled to assume that, subject to appellate or judicial review, its decision will not only *be* final, it will be treated as such by other adjudicative bodies. The procedural or substantive correctness of the previous proceeding is not meant to be bait for another tribunal with a concurrent mandate.

In light of the applicable common law principles, the Majority found that, at the relevant time, both the Tribunal and the Board had concurrent jurisdiction over the subject matter of the complaint and that the complaints constituted a duplication of the Board’s proceedings, which had already decided the issues at hand. Further, it found that each of the complainants participated fully in the proceedings and knew the cases that they had to meet.

The Majority found that the Tribunal’s decision to proceed with the complaints was patently unreasonable because it was based on irrelevant factors, including a strict application of the doctrine of issue estoppel and the inappropriate consideration of factors that would only have been relevant to a judicial review body. Furthermore, the Tribunal ignored its true mandate under subsection 27(1)(f) of the *Code*. Accordingly, the Majority set aside the Tribunal’s decision and dismissed the complaints.

Notably, in arriving at its decision, the Majority refused to allow the employees to take advantage of their own choice not to judicially review the Review Officer's decision. The Majority stated:

Having chosen not to judicially review the decision as they were entitled to do, the complainants cannot then claim that because the decision lacks "finality" they are entitled to start all over again before a different decision-maker dealing with the same subject matter.

Conclusion

In Ontario, the issue of whether another proceeding has "appropriately dealt with" the subject matter of a human rights application would most often arise when a unionized employee brings a grievance under a collective agreement and then pursues an application under the Ontario *Human Rights Code*. This decision provides direction on how to interpret section 45.1 of the Ontario *Human Rights Code*, which closely mirrors subsection 27(1)(f) of the British Columbia *Code*.

The Supreme Court of Canada has made clear that human rights tribunals considering whether the subject-matter of a human rights complaint has been "appropriately dealt with" in another proceeding are not to engage in a strict application of the above-mentioned common law doctrines. Nor are they to take on the role of a judicial review body. Rather, they are to apply the three-part test that the Supreme Court of Canada has set out, which is based on the collective principles underlying these common law doctrines. The Supreme Court of Canada's comments on the importance of finality, underscore that the type of forum shopping that occurred in this case is not appropriate.

For further information, please contact Roslyn McGilvery at 416-408-5505, or your regular lawyer at the firm.

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