

WHICH DECISION-MAKER HAS JURISDICTION IN A HUMAN RIGHTS "TURF WAR": THE HUMAN RIGHTS TRIBUNAL OR THE LABOUR ARBITRATOR?

Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Quebec (Attorney General), [2004] S.C.J. No.34 (QL). (and its companion case, *Quebec (Attorney General) v. Quebec (Human Rights Tribunal)*, [2004] S.C.J. No.35 (QL)).

As previously summarized in the *Parry Sound* case, the Supreme Court of Canada has expounded at length on the exclusive jurisdiction granted to arbitrators over matters arising from collective agreements as well as the arbitral power to apply human rights legislation. However, in a very recent decision, the Court has determined that a Human Rights Tribunal was a "better fit" for a dispute that centred on whether it was discriminatory to negotiate and agree to collective agreement provisions that adversely affected younger workers as compared to more experienced, older workers.

While recognizing that a Human Rights Tribunal's jurisdiction over human rights violations is not exclusive, the majority of the Court found that the dispute – in its "full factual context" – arose out of pre-contractual negotiations and not out of the collective agreement itself. Therefore, the majority found that the Human Rights Tribunal was the "best fit" to deal with the matter. Expect the "turf wars" to continue.