

**WEBER TEST APPLIED TO DETERMINE WHICH OF TWO STATUTORILY CREATED BODIES SHOULD HEAR DISPUTE**

*Regina Police Association v. Regina (City) Board of Police Commissioners* [2000] 1 S.C.R. 360

**Facts**

Greg Shotton was a member of the Regina Police Services. He was informed that he would be charged with discreditable conduct pursuant to the Municipal Police Regulations and could also be subject to dismissal proceedings pursuant to the *Police Act, 1990*. He was told that these disciplinary measures could be avoided if he resigned his employment. Accordingly, Shotton tendered his resignation. Two weeks following his resignation, Shotton attempted to withdraw his letter of resignation, but was not permitted to do so by the Chief of Police. The union filed a grievance which proceeded to arbitration.

**Arbitration Decision**

The Arbitrator concluded that she was without jurisdiction to consider the dispute. The collective agreement stated that its grievance provisions were not to be used in circumstances where the provisions of the *Police Act* and Regulations apply. The *Police Act* and its Regulations provided a procedural scheme for disciplinary action.

The Arbitrator found that the essential character of the grievance related to internal discipline. Accordingly, the Arbitrator concluded that the proper and exclusive forum for resolving the dispute was a hearing under the *Police Act* either before the Chief, an independent hearing officer, or the Saskatchewan Police Commission.

**Saskatchewan Court of Queens Bench**

The Court upheld the Arbitrator's decision, agreeing in full with her reasons.

**Saskatchewan Court of Appeal (1998), 163 D.L.R. (4th) 145**

The majority of the Court of Appeal allowed the appeal, finding that the Arbitrator had jurisdiction to hear and decide the grievance pursuant to the collective agreement.

The Court characterized the central issue in dispute as the determination of the means by which the validity of Shotton's resignation could be tested. The Court found that there was no mechanism for Shotton to have the validity of his resignation tested under the *Police Act*. Since the issue of the validity of Shotton's resignation arose in the employment context, the grievance procedure provided by the collective agreement was preferable to litigation before a court.

## **Supreme Court of Canada**

The Supreme Court overturned the decision of the Court of Appeal, agreeing with the decision of the dissenting member of the Court of Appeal.

The issue before the Court was whether the dispute between Shotton and his employer arose out of the collective agreement. The test for making this decision was set out by the Supreme Court in *Weber*. This test requires determining: (1) the essential character of the dispute, and (2) the ambit of the collective agreement.

If the essential character of the dispute arises either explicitly or implicitly from the interpretation, application, administration or violation of the collective agreement, the dispute lies within the sole jurisdiction of an arbitrator. The Court concluded that the essential character of the dispute in the case before it was discipline. The informal resolution of the disciplinary matter by Shotton submitting his resignation did not change its essential character as one of pending disciplinary action.

With respect to the question of whether the dispute fell within the ambit of the collective agreement, the Court noted that the legislature intended members of the police force to be governed by two separate schemes: the collective agreement and the *Police Act* and its Regulations. The Court could not interpret the collective agreement in a manner that would offend the scheme set out in the *Police Act* and its Regulations. Furthermore, the collective agreement itself emphasized that it could not be utilized in circumstances where the provisions of the *Police Act* and Regulations apply. The *Police Act* and the Regulations contained detailed provisions dealing with the investigative, adjudicative and appeal stages of the disciplinary process. This was intended to provide a complete code governing disciplinary matters. Accordingly, the parties had no discretion to select another legal mechanism such as arbitration to consider disciplinary matters. The Arbitrator therefore lacked jurisdiction to hear and decide the matter.