

Class action claiming gender harassment dismissed as only arbitrator had jurisdiction

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A group of female police officers has lost its bid to bring a class action in the courts for gender discrimination and harassment. (1)

The officers had claimed systemic gender-based discrimination and harassment by male members of the police force.

The court held that it had no jurisdiction over the class action because the claims should have been brought at arbitration. Under the Police Services Act, arbitration is mandatory and binding, even though the arbitrator did not have the power to award punitive damages. The officers were therefore barred from making the discrimination and harassment claim in the courts.

The fact that the police association (the police union that would have carriage of a harassment case at arbitration) was comprised mostly of male members did not require the court to take jurisdiction.

The court also held that a claim of workplace discrimination did not constitute a viable cause of action under common law. This meant that even if the court (rather than an arbitrator) had jurisdiction over the case, the claim was not the type of case that the courts will hear.

The court concluded:

The Defendants should not regard this result as a vindication of current practices. Like Sharpe JA in A(K), I have considerable sympathy for the Plaintiffs' desire to have this litigated in court. Even on the limited and contradictory evidence before me, it is apparent that this case raises serious, triable issues relating to the workplace culture. The allegations are very troubling and will require close scrutiny should this matter proceed to another forum for adjudication.

The court action was therefore stayed.

The plaintiffs have appealed the decision to the Ontario Court of Appeal. (2)

For further information on this topic please contact [Adrian Miedema](#) at Dentons Canada LLP by telephone (+1 416 863 4511) or email (adrian.miedema@dentons.com). The Dentons Canada LLP website can be accessed at www.dentons.com.

Endnotes

(1) *Rivers v Waterloo Regional Police Services Board*, 2018 ONSC 4307 (CanLII).

(2) For more information please see www.occupationalhealthandsafetylaw.com.

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