

SUPREME COURT OF CANADA - APPEAL HEARD

OTTAWA, 24/1/03. THE SUPREME COURT OF CANADA ANNOUNCED TODAY THAT THE FOLLOWING APPEAL WAS HEARD ON JANUARY 24, 2003.

SOURCE: SUPREME COURT OF CANADA (613) 995-4330

COUR SUPRÊME DU CANADA - APPEL ENTENDU

OTTAWA, 24/1/03. LA COUR SUPRÊME DU CANADA A ANNONCÉ AUJOURD'HUI QUE L'APPEL SUIVANT A ÉTÉ ENTENDU LE 24 JANVIER 2003.

SOURCE: COUR SUPRÊME DU CANADA (613) 995-4330

District of Parry Sound Social Services Administration Board v. Ontario Public Service Employees Union, Local 324 (Ont.) (Civil) (By Leave) (28819)

RESERVED / EN DÉLIBÉRÉ

28819 District of Parry Sound Social Services Administration Board v. Ontario Public Service Employees Union, Local 324 et al

Labour law - Arbitration - Collective agreement - Statutes - Interpretation - Grievor, a probationary employee, discharged shortly after return from maternity leave - Grievance brought alleging discharge constituted discrimination on basis of family status - Collective agreement providing discharge of probationary employees not subject to grievance and arbitration procedures - Whether discharge alleging discrimination in violation of *Human Rights Code* subject to grievance and arbitration procedures pursuant to arbitrator's jurisdiction under *Labour Relations Act* notwithstanding contrary provision in collective agreement - *Labour Relations Act, 1995, S.O. 1995, c.1, ss.48(1), 48(12)(j), 54 - Employment Standards Act, R.S.O. 1990, c.E.14, as amended, ss. 44,64.5.*

The grievance in issue was brought by a probationary employee of the Appellant who had been discharged shortly after her return from maternity leave. The grievor and the Respondent, Union, alleged, *inter alia*, that the discharge was discriminatory on the basis of family status, contrary to s. 5(1) of the Ontario *Human Rights Code*, R.S.O. 1990, c.H.19. The collective agreement provided that probationary employees could be discharged at the sole discretion of and for any reason satisfactory to the employer and that such discharge is not subject to grievance and arbitration procedures.

In its interim award, the board of arbitration held that it had jurisdiction to consider a grievance based on the discharge of a probationary employee. On judicial review, the Divisional Court unanimously quashed the board's award, finding that the grievor's complaint should have been before the Ontario Human Rights Commission and not the Board of Arbitration. The Ontario Court of Appeal allowed the Respondent's appeal, set aside the order of the Divisional Court and dismissed the application for judicial review.

The issue considered by the board of arbitration and the Divisional Court was the proper effect to be given to s. 5(1) of the *Human Rights Code*, having regard to s. 48(12)(j) of the *Labour Relations Act, 1995*, S.O. 1995, c.1. On appeal, the Ontario Court of Appeal also requested and heard submissions on the bearing of ss. 44 and 65.5(1)-(5) of the *Employment Standards Act*, R.S.O. 1990, c.E.14, as amended. The Court of Appeal allowed the appeal, set aside the decision of the Divisional Court and dismissed the application for judicial review.

Origin of the case: Ontario

File No.: 28819

Judgment of the Court of Appeal: June 19, 2001

