

Member's Quarterly

Summer 2025 Edition

Feature

Failure to Defend Employment Standards Complaint May Affect Other Forums

Take Employment Standards complaints more seriously.

Employers often face legal claims or complaints by employees in different forums. An initial claim may be to Employment Standards and then a subsequent lawsuit or other claim is filed. These matters can proceed at the same time, and employers are usually more concerned about the lawsuit than the administrative proceeding. This is not surprising since the lawsuit often has the potential for higher damages. However, it is important that employers take each claim or complaint seriously, as a decision in one can determine the outcome in others.

For instance, a common scenario is that a terminated employee files an Employment Standards complaint followed by a wrongful dismissal lawsuit. The Employment Standards matter will normally be decided long before the lawsuit is concluded. If the employer claims just cause and Employment Standards rules there was not just cause, the employer may lose its ability to claim just cause in the lawsuit. But if Employment Standards rules the termination was for just cause, the employer may be able to dismiss the lawsuit summarily, saving considerable time and resources.

In addition to lawsuits, different proceedings could involve Employment Standards, grievance arbitration, the Labour Board, the Privacy Commissioner, Human Rights, Occupational Health and Safety and other statutory claims.

When considering whether an initial decision is binding upon a subsequent case, the following questions will be asked:

- 1. Is the existing decision judicial in nature?** This does not mean the decision must have been made by a judge, but simply by a body capable of exercising judicial authority and making the decision in a judicial manner.
- 2. Did the previous proceeding decide the same issue?**
- 3. Is the existing decision final?** A final decision includes a decision where there was a right of appeal that was not exercised.
- 4. Are the parties the same?** Issue estoppel only applies where the parties subject to the initial decision include the same parties involved in the subsequent proceeding. Thus, a decision on a claim by one employee against an employer will not automatically bind the employer in respect to a claim by a different employee.

A Recent Case

In the recent decision of *Miciak v Sarah McLachlan School of Music*, the Alberta Human Rights Tribunal (the "Tribunal") affirmed that parallel matters adjudicated by Alberta Employment Standards may result in a finding of issue estoppel and the Employment Standards decision being accepted as final and binding in the human rights complaint.



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In this matter, Laurelle Miciak filed a human rights complaint against her former employer, Sarah McLachlan School of Music (the "**Employer**"), alleging discrimination in the area of employment practices on the ground of gender under section 7 of the *Alberta Human Rights Act*.

In addition to her human rights complaint, Ms. Miciak also filed two other complaints against the Employer in other forums: an Occupational Health and Safety complaint alleging discriminatory action related to her reporting a health and safety concern and an Employment Standards complaint alleging that she was constructively dismissed and entitled to termination pay.

On the Employment Standards complaint, it was found that the Employer constructively dismissed the employee. It was ordered to provide termination pay. This decision was upheld on appeal, and the Employer did not seek judicial review of this decision (the "**ES Decision**").

Human Rights Decision

Before the Human Rights Commission, the Director asked the Tribunal to apply issue estoppel and accept, as a finding of fact, the ES Decision that the Employer terminated Ms. Miciak's employment. The Employer was arguing that the employee had resigned.

The Tribunal granted the application finding that Employment Standards, and the Labour Board acting on appeal, routinely make findings of fact as to whether an individual was wrongfully dismissed or resigned. The Tribunal also found there were sufficient procedural safeguards in place, especially considering the fact that the Employment Standards decision was appealed, to satisfy the test for issue estoppel (with no compelling reasons for the Tribunal to not exercise its discretion).

However, despite being bound by the ES Decision that Ms. Miciak's employment was terminated, the Tribunal clarified that the question of whether gender was a factor in the termination remained a live issue as that was not considered in the ES Decision.

Implications

This decision is instructive for the proposition that issue estoppel can apply to parallel or related human rights and Employment Standards matters. It reinforces the importance of employers taking Employment Standards complaints seriously and advancing their best defence.

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