



## Divisional Court: arbitrator has no jurisdiction to hear probationary employee's grievance

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In a judgment released on February 21, 2000, a panel of the Ontario Divisional Court has ruled that a board of arbitration had no jurisdiction over a probationary employee's discharge grievance. The case, *OPSEU, Local 324 v. Parry Sound Welfare Administration Board*, (see "[Collective agreement no bar to human rights grievance of probationary employee](#)" on our Publications page) concerned a probationary employee discharged a few days after returning from maternity leave, who had alleged that the discharge was in bad faith and discriminated against her on the basis of her family status.

The employer argued that the board of arbitration had no jurisdiction to hear the grievance, pointing to the provision in the collective agreement stating that the discharge of a probationary employee was "not subject to the [grievance procedures] and does not constitute a difference between the parties". A majority of the board disagreed, noting that, under section 48(12)(j) of the *Labour Relations Act*, arbitrators have the power "to interpret and apply human rights and other employment-related statutes, despite any conflict between those statutes and the terms of the collective agreement". Therefore, the majority held, the board did have jurisdiction over the grievance, but solely as it pertained to the allegation of discrimination in contravention of the *Human Rights Code*.

The Court, however, held that arbitrators have the power to interpret and apply human rights and other employment-related statutes *when and if they have jurisdiction over the grievance*, but not otherwise. Here, the collective agreement stated clearly that the discharge of a probationary employee did not constitute a difference between the parties. If the grievor felt that she had suffered discrimination, the proper place for her to pursue her claim was before the Ontario Human Rights Commission. (For more recent developments, see "[Court of Appeal reverses Divisional Court ruling on arbitrability of probationary employee's grievance](#)" and "[Supreme Court of Canada: arbitration board has jurisdiction over human rights grievance of probationary employee](#)" on our Publications page.)