

Human Rights and Labour Legislation Held Not to Oust Jurisdiction Over Class Action For Breach of Employment Contract

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In *Lewis v. WestJet Airlines Ltd.*, the British Columbia Court of Appeal confirmed that the court's jurisdiction to hear cases alleging breach of an employment contract will not be ousted by the operation of the *Canadian Human Rights Act*, or the *Canada Labour Code*, even if discrimination or harassment is alleged.

Lewis is a proposed class action that has not yet been certified. Ms. Lewis brought an action for breach of contract against her employer, WestJet, for allegedly failing to fulfil an "Anti-Harassment" promise contained in her and her colleagues' contracts of employment. The promise had incorporated WestJet's various policies relating to human rights and discrimination.

WestJet brought an application to strike the class action on the basis that the courts lacked jurisdiction to hear the dispute. WestJet argued that the substance or essential character of the claim was that WestJet had breached the proposed class' statutory rights protected under the *Canadian Human Rights Act* and the *Canada Labour Code* by failing to provide a workplace free from discrimination, sexual and other harassment. As a result, WestJet alleged that the pleading of "breach of contract" was merely a drafting technique disguising the true substance of the claim, which was properly within the jurisdiction of the Canadian Human Rights Tribunal. The plaintiff argued that this was not a case where she was seeking to enforce statutorily conferred rights through a civil action where those rights arose solely from statute. Rather, her claim was for breach of the employment contract. While the statutory rights conferred under the human rights and labour legislation may overlap with or replicate her rights under the employment contract, this should not prevent her from choosing her cause of action, remedy or procedure (i.e. through a class proceeding).

At the lower court, Humphries J. dismissed WestJet's application to strike the notice of civil claim. Humphries J. concluded that, at its core, the notice of civil claim rested on allegations of breach of the employment contract, and not on a statutory right or a claim of discrimination, per se. It was not plain and obvious that the action was bound to fail.

The Court of Appeal (Frankel, Tysoe and Harris JJ.) dismissed WestJet's appeal and upheld the lower court's decision. Although the contract of employment may have overlapped with or replicated Ms. Lewis' statutory rights, Harris J.A. agreed that the contract of employment was a recognized source of legal rights grounding remedies for a breach in the courts. If Parliament had intended the *Canadian Human Rights Act* to oust the court's jurisdiction over matters otherwise subject to its jurisdiction, it would have done so expressly.

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