

COURT OF APPEAL FOR ONTARIO

CITATION: Rivers v. Waterloo Regional Police Services Board, 2019 ONCA 267

DATE: 20190405

DOCKET: C65760

Simmons, Juriansz and Miller JJ.A.

BETWEEN

Angelina Rivers, Sharon Zehr and Barry Zehr

Plaintiffs (Appellants)

and

Waterloo Regional Police Services Board and
Waterloo Regional Police Association

Defendants (Respondents)

R. Douglas Elliott and H. Scott Fairley, for the appellants

Elena Mamay and Eric Sheung Chi Cheng, for the appellants

James H. Bennett, for the respondent Waterloo Regional Police Services Board

Caroline (Nini) Jones, for the respondent Waterloo Regional Police Association

Jodi Martin and Glynnis Hawe, for the respondent Waterloo Regional Police
Association

Heard: April 2, 2019

On appeal from the order of Justice Deena Baltman of the Superior Court of
Justice, dated July 13, 2018

REASONS FOR DECISION

[1] The appellants appeal from the motion judge's order granting the respondents' motions to dismiss their action for want of jurisdiction and also dismissing their motion for certification as a class action.

[2] The appellants are current and former uniform members of the Waterloo Regional Police Service. They commenced a proposed class action against the Waterloo Regional Police Services Board and the Waterloo Regional Police Association asserting multiple claims relating to systemic gender-based workplace discrimination and harassment, including breach of s. 15 *Charter* rights and, as against the Association, breach of the duty of fair representation.

[3] The motion judge found that the police officers' and former police officers' employment is and was governed by collective agreements that not only prohibit discrimination but also contain comprehensive grievance procedures and ultimately provide for binding arbitration under Part VIII of the *Police Services Act*, RSO 1990, c P.15 ("PSA"). Further, under the collective agreements, the Association has a duty of fair representation, enforceable under Part VIII. Police officers may also advance a claim of workplace discrimination or sexual harassment before the Human Rights Tribunal of Ontario ("HRTO").

[4] At paras. 25 through 42 of her reasons, the motion judge reviewed the governing jurisprudence and concluded that the legislative scheme and case law requires that the appellants' claims be adjudicated before a labour arbitrator or at the HRTO and that the Superior Court lacks jurisdiction over their claims.

[5] We agree with the motion judge that binding jurisprudence from this court applying *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929 (S.C.C.), in the policing

context dictates that the Superior Court lacks jurisdiction to entertain the proposed class action. See, for example, *Renaud v. LaSalle (Town) Police Assn.*, [2006] O.J. No. 2842 (C.A.) and *Cumming v. Peterborough Police Association*, 2013 ONCA 670. See also *K.A. v. Ottawa (City)* (2006), 80 O.R. (3d) 161.

[6] In that regard, we observe that, contrary to the appellants' submissions, the collective agreement permits group complaints or grievances. Moreover, arbitrators under Part VIII of the PSA have broad remedial powers sufficient, in our view, to remedy the wrongs alleged.

[7] The appellants argue that the discriminatory environment in which they find themselves leaves them without an adequate remedy on a practical basis and that this requires that they be granted access to the courts. One fatal flaw in this argument is that the appellants have not attempted to avail themselves of the mandatory grievance/arbitration process or led evidence to demonstrate that it is practically unavailable.

[8] The appellants' appeal from the dismissal of their action is therefore dismissed. In the result, it is unnecessary that we address the appeal of the dismissal of the certification motion.

[9] If the parties are unable to agree on costs within 21 days from the release of these reasons, the respondents may deliver brief written costs submissions

within 10 days thereafter and the appellants and the Law Foundation may respond within a further 10 days.

 J.A.

 J.A.

 J.A.