

- [2] The plaintiff is a former employee of the defendant, le Conseil Scolaire de District Catholique du Nouvel-Ontario (CSCNO). She is a former member of the defendants, the Ontario Secondary School Teachers' Federation (OSSTF) and l'Unité 61 du District 31 de la Fédération des enseignantes et des enseignants des écoles secondaires de l'Ontario (the Union).
- [3] The action is brought against:
- a. CSCNO, as well as four of its employees (collectively the CSCNO defendants);
 - b. The OSSTF, as well as its past president, past general secretary, in-house legal counsel, and an executive assistant (collectively the OSSTF defendants); and
 - c. The Union

Background

- [4] The plaintiff was employed by CSCNO as an educational assistant. That employment, which was governed by a collective agreement, was terminated by CSCNO on May 11, 2018.
- [5] The OSSTF filed an individual grievance of this dismissal on behalf of the plaintiff, seeking reinstatement with compensation. Pursuant to the collective agreement, an arbitrator was appointed and presided over the grievance hearing, which lasted 11 days.
- [6] In thorough reasons dated April 18, 2024, the arbitrator dismissed the grievance. The arbitrator concluded CSCNO had just cause to terminate the plaintiff's employment. This was because the arbitrator found the plaintiff had worked for another employer while she was on paid sick leave with CSCNO because of total disability. The arbitrator further found that when CSCNO learned of the other employment, they spent eight months trying unsuccessfully to get information about it from the plaintiff before finally terminating her employment.
- [7] On May 22, 2024, the plaintiff caused to be issued a notice of action which was followed by an almost 160-page statement of claim on June 04, 2024. In this action the plaintiff challenges the arbitration decision as well as the termination of her employment and seeks various other relief.

The positions of the parties

- [8] The defendants argue the claim should be struck because it fails to disclose a reasonable cause of action. In short, the defendants submit this court lacks jurisdiction to consider the various claims for relief because they are expressly or inferentially linked to her employment with CSCNO. Issues arising from that employment, the defendants argue, are the exclusive jurisdiction of a labour arbitrator.
- [9] The defendants further submit the action is frivolous, vexatious and an abuse of the court's process because it is a collateral attack on the arbitration decision and an attempt to challenge the jurisdiction of the arbitrator and the Ontario Labour Board.

- [10] The defendants also argue leave should not be granted to amend the claim because no amendments would be capable of demonstrating this court has jurisdiction over these matters.
- [11] Finally, the defendants argue that even if the court had jurisdiction over the matters in dispute, the plaintiff missed the limitation periods to commence the action.
- [12] In oral argument, the plaintiff acknowledged her claim to quash the arbitrator's decision is outside the jurisdiction of this court, and she asks that it be severed. Otherwise, she submits her claim is not about setting aside the award but rather is meant to address systemic failures and misconduct on the part of the defendants before, during, and after the arbitration process. She asks that she be granted leave to apply for judicial review of the arbitration decision.
- [13] The plaintiff further argues the defendants failed to pursue judicial review on her behalf and asks the court to invoke its declaratory and equitable authority to grant relief against these wrongs. She submits a trial is required to resolve significant factual and credibility issues. Further, she argues a trial will serve the public interest in holding the defendants accountable. She asks that the motions be dismissed or in the alternative that she be granted leave to amend her claim.

Analysis

Does the court have jurisdiction over the matters raised in the claim?

- [14] Section 48(1) of the *Ontario Labour Relations Act, 1995* SO 1995, c.1, Sch A (the OLRA) reads as follows:
- Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.
- [15] In *Weber v. Ontario Hydro*, [1995] 2 SCR 929 at para 43 the court confirmed that “[w]here the dispute, regardless of how it may be characterized legally, arises under the collective agreement, then the jurisdiction to resolve it lies exclusively with the labour tribunal and the courts cannot try it.”
- [16] In addition, pursuant to paragraph 48(12)(j) of the OLRA, arbitrators are granted the express power to “interpret and apply human rights and other employment-related statutes.”
- [17] The question then is whether the plaintiff's claims, regardless of how they are framed, arise under the collective agreement.

Claims relating to the plaintiff's employment and its termination

- [18] In my view, this court does not have jurisdiction to decide claims regarding the plaintiff's employment and its termination.
- [19] The plaintiff seeks reinstatement to her position as an educational assistant with the CSCNO. In the alternative, she asks that her grievance be returned to a new arbitrator.
- [20] These requests are clearly barred by section 48(1) of the OLRA and the *Weber* principle.

Claims for breach of duty of fair representation

- [21] The Ontario Labour Relations Board (the OLRB) "has exclusive jurisdiction over a union's representation of its members on virtually all matters relating to the employees' relationship with their employers. Ordinarily, employees dissatisfied with their union's representation on an employment issue must pursue their grievance by an unfair representation complaint to the Board": *Berlinguette v. O'Ryan*, 2010 ONSC 4266 at para 11; OLRA, ss. 74 and 114(1).
- [22] In her claim the plaintiff seeks, among other thing:
- a. an order directing the OSSTF to "file all grievances" that should have been filed on her behalf;
 - b. a declaration that the OSSTF and the Union cannot fairly represent her;
 - c. an order compelling the OSSTF to allow the plaintiff her own independent counsel;
 - d. damages for
 - i. breach of the OLRA;
 - ii. breaches of the CSCNO policies, procedures and practices;
 - iii. breaches of the *Ontario Human Rights Code*;
 - iv. breaches of statutory duties;
 - v. breaches of the Union's statutes and bylaws;
 - vi. breaches of OSSTF's statutes and bylaws;
 - vii. conflicts of interest; and
 - viii. fraudulent misrepresentation.

[23] In my view, these requests are in clear violation of the OLRB's exclusive jurisdiction over these matters. Ultimately, these claims suggest the plaintiff was not fairly represented by the OSSTF and the Union.

[24] The plaintiff has also made claims against two former officers and two employees of the OSSTF. These claims relate to fair representation and are the exclusive jurisdiction of the OLRB. The plaintiff claims, for example:

- a) That the former OSSTF President, Elliott, denied her representation in meetings and the trusteeship proceedings;
- b) That the former General Secretary of the OSSTF, Coté, pressured her to ignore the Union's policies and procedures, created a hostile environment and tried to remove her as president;
- c) That the OSSTF's in-house legal counsel, Gutman, failed to adequately defend her termination grievance. I note that Hennessy J. dismissed for lack of jurisdiction a similar action against a union lawyer in *Berlinguette*; and
- d) That the Executive Assistant at the OSSTF, Robillard, mishandled the grievance.

[25] Similar claims regarding fair representation are made against four employees of CSCNO. All the allegations relate to the individual defendants' employment and include allegations of mishandling of the grievance. They are accordingly governed by the OLRB.

Claims relating to the plaintiff's removal as president and grievance officer

[26] The plaintiff claims she was "unjustly, unfairly, and illegally" removed as her local union president and grievance officer. She seeks reinstatement to these positions as well as lost wages.

[27] However, the OLRB has exclusive jurisdiction to deal with these matters. In fact, the plaintiff filed at least 8 applications with the OLRB seeking this relief in the past. She abandoned her last application on the condition that the OLRB not deem her a vexatious litigant. The Board agreed not to require her to seek leave of the Board before filing further applications. On that basis her application was withdrawn: *Angèle Gaudette v. Ontario Secondary School Teachers' Federation (OSSTF)*, 2017 CanLii 23209 (ON LRB); *Angèle Gaudette v. Ontario Secondary School Teachers' Federation (OSSTF)*, 2017 CanLii 28673 (ON LRB).

The request to quash the arbitration decision

[28] The plaintiff acknowledges this court lacks jurisdiction to quash the arbitration decision. However, she seeks leave to apply for judicial review of that decision.

[29] In my view, this relief is not available. First, the time to seek judicial review expired thirty days after the decision was released, well over a year ago. Second, the plaintiff does not have standing to apply for judicial review: the OSSTF and CSCNO were the parties to the arbitration. Despite the plaintiff's request, the OSSTF did not apply for judicial review. The appropriateness of that decision goes directly to the issue of fair representation and is the exclusive jurisdiction of the OLRB.

Should the claim be struck because it discloses no reasonable cause of action?

[30] In *Cerqueira v. Ontario*, 2010 ONSC 3954 Strathy J. (as he then was) set out at paragraph 11(g) the law regarding motions to strike:

on a motion to strike a pleading under rule 21.01(1) on the ground that it discloses no cause of action, it must be shown that it is plain, obvious and beyond doubt that the claim cannot succeed and the pleading must be read generously; allegations of fact, unless plainly ridiculous or incapable of proof must be accepted as proven: *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), 1990 CarswellBC 216 (S.C.C.);

- [31] In my view, where the claim seeks relief aside from issues solely within the jurisdiction of the OLRB, which have already been discussed, it discloses no reasonable cause of action. I will group and review the balance of these requests below.

Breach of fiduciary duties

- [32] There are two ways fiduciary relationships can exist: *per se* and *ad hoc*. The former relates to categories of relationships such as parent-child, guardian-ward, agent-principal, and solicitor-client: *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24, at para 33.
- [33] The latter arises on a case-by-case basis, and requires an undertaking by the alleged fiduciary, a beneficiary vulnerable to the fiduciary and a legal or other interest of the beneficiary that stands to be adversely affected by the fiduciary: *Elder Advocates*, at para. 36.
- [34] The plaintiff fails to explain how any of the defendants owed a fiduciary duty to her in the context of either scenario.

Liability claims

- [35] The plaintiff makes various claims for contingent, criminal, professional, risk reduction and vicarious liability. However, she does not provide material facts in support of these claims. In addition, these proceedings are not the proper forum for determining allegations of criminal liability.

Criminal or quasi-criminal claims and tort claims

- [36] Many of the plaintiff's claims (such as conspiracy, corruption, defamation, intimidation) allege some form of criminal or quasi-criminal conduct on the part of the defendants, yet no details are provided. For example, with respect to conspiracy, the plaintiff is required to set out 'with clarity and precision' the acts complained of and the injury suffered as a result: *Normart Management Ltd. v. West Hill redevelopment Co. Ltd.*, 1988 CanLII 2447 (ON CA).
- [37] The same is true of the tort claims (such as breach of duty to act with utmost good faith, duty of honesty in contractual performance, intentional infliction of mental suffering, interference with economic relations). The material facts in support of these claims are absent. And where the claims are based on statutory duties, such as the duty of fair representation, they are the exclusive jurisdiction of the OLRB.

Other claims

[38] The court does not have jurisdiction to compel the laying of criminal charges, as requested by the plaintiff. Nor can it compel the defendants to issue apologies. The plaintiff also seeks damages for family members but does not name them as parties. These claims accordingly disclose no reasonable cause of action.

Should leave be granted to amend the claim?

[39] In my view, leave to amend should not be granted.

[40] No number of amendments will change the fact it is plain and obvious the claims will fail. Categorizing her claims in different ways does not change the nature of the dispute. At its core, the dispute between the plaintiff and the defendants relates to her employment within the context of a collective agreement. That dispute is the exclusive jurisdiction of the OLRB.

[41] Having granted the motions under Rule 21.01(1)(b) and 21.01(3), I need not address the alternative arguments made by the defendants.

Conclusion

[42] For these reasons the motions are granted, and the claim is struck, without leave to amend.

[43] If the parties cannot agree on costs, the defendants may serve and file written submissions on costs of no more than 2 pages, double-spaced, not including any offers to settle and bills of costs, within 15 days of the date of this decision. The plaintiff will have 45 days from the date of this decision to file her written submissions. The plaintiff's written submissions will be restricted to no more than five pages, double-spaced, not including any offers to settle and bills of costs.

Regional Senior Justice P. J. Boucher

Released: August 26, 2025