

Employees Must Choose: Civil Claim or Human Rights Complaint?

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As many employers know, it is not uncommon for employees to make allegations about wrongful or constructive dismissal that also involve alleged violations of the *Human Rights Code* (Code). Employers may wonder, does this mean that an employee can initiate a civil action in court and make a human rights complaint at the same time? In Ontario, the answer is usually, “No.”

Section 34(11) of the Code provides that a person who believes that their rights under the Code have been infringed may not make an application to the Human Rights Tribunal of Ontario (HRTTO) with respect to that right if: (a) a civil proceeding has been commenced and that proceeding has not been finally determined or withdrawn or (b) a court has finally determined the issue of whether the right has been infringed or the matter has been settled. Section 34(11) has recently been interpreted broadly in Ontario and applied as a mandatory bar which is engaged even where the civil claim in question does not explicitly seek remedies for infringement of the Code or even mention discrimination at all. As long as the facts and issues in the two proceedings are the same, Section 34(11) must be applied and the HRTTO application must be dismissed. This approach is intended to eliminate duplicate proceedings and to ensure that respondents do not have to respond twice to the same allegations.

A recent HRTTO decision confirmed this approach. The applicant in *Moore v. Unionville Family Physicians* 2025 HRTTO 3100 filed an application with the HRTTO alleging that her employer had discriminated against her on the basis of her age. The HRTTO noted that she was also a plaintiff in a civil proceeding against her employer alleging that she had been wrongfully dismissed and discriminated against on the basis of disability. After reviewing the record, the HRTTO issued a Notice of Intent to Dismiss. Moore responded by asking that the HRTTO simply defer her application until the civil proceeding had been resolved.

The HRTTO declined to defer her application, holding that the HRTTO has no jurisdiction to proceed when Section 34(11) applies. The HRTTO noted that Section 34(11) must apply without any assessment as to whether or not the civil action will be successful. The determinative question is whether the facts and issues in the two proceedings are the same. In this case, Moore’s HRTTO application and her civil claim arose from facts that were alleged to have occurred within the same time period, involving the same parties. Even though the civil claim did not mention age-related discrimination, the HRTTO found that in both proceedings adjudications “would need to consider the same conduct of the respondents and determine whether it is unlawful.” (para 12) As a result, Moore’s application to the HRTTO was dismissed.

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Employers who are faced with concurrent employment complaints have options. Please reach out to any member of the Cassels [Employment & Labour Group](#) if your company needs assistance with crafting a litigation strategy that minimizes the risks and costs associated with overlapping proceedings.

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