

**Citation:** Shilton, Elizabeth, "Choice, but no Choice: Adjudicating Human Rights Claims in Unionized Workplaces in Canada" (2013) 38:2 Queen's LJ 461

**Abstract:** Using differences between the American and Canadian approaches as its starting point, this paper explores the question of the proper forum for the adjudication of workplace human rights claims of unionized employees in Canada. The Supreme Court of Canada has directed that what the author describes as a hybrid model is to prevail, with arbitrators having exclusive jurisdiction over some but not all of those claims. Nonetheless, the model now prevailing in the lower courts and tribunals is one of unrestricted concurrency between statutory human rights tribunals and arbitration, under which unionized employees may choose where to take their claims. The author argues that this choice is more apparent than real; as a practical matter, recent developments in statute and case law have made grievance arbitration so overwhelmingly advantageous to employees that statutory adjudication is no longer a realistic option. To remove confusion and ambiguity, Canadian legislatures should provide clear direction on which forum has jurisdiction. Arbitration should be confirmed as the exclusive forum for human rights claims that are closely linked to the collective agreement. Recourse to statutory human rights tribunals should be available only in the infrequent cases where, in the light of union control over access to the grievance and arbitration process, union complicity in employer discrimination means that arbitration is not a realistic option. The author argues that in all other circumstances, arbitration is fully capable of vindicating individual human rights claims of unionized employees, relying on a framework that integrates these claims with other rights and interests relevant to equal harmonious and productive workplaces.