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Oral Judgment Ends Long Running Pay Equity Dispute

The Supreme Court of Canada restored the tribunal ruling in [Public Service Alliance of Canada v. Canada Post Corporation](#), 2011 SCC 57, confirming Canada Post's liability for back wages and interest for the mostly female clerical workers who argued 28 years ago that their work was comparable to that of higher paid male postal workers. The Supreme Court agreed with the dissenting reasons in the Federal Court of Appeal [judgment](#), which it said "comprehensively address the issues." The [factums](#), [summary](#), and [webcast](#) of the hearing are available on the SCC website. Damages could exceed \$250 million according to sources quoted in these articles:

- [Postal workers win 28-year pay equity fight](#), CBC News;
- [Top court swiftly decides longest-running pay equity dispute](#), *The Star*;
- [Took 30 Years, But Canada Post Employees Win Pay Equity Complaint!](#), Doorey's Workplace Law Blog.

A Bad Week for Human Rights Tribunals

Two recent Supreme Court decisions, [British Columbia \(Workers' Compensation Board\) v. Figliola](#), 2011 SCC 52 and [Canada \(Canadian Human Rights Commission\) v. Canada \(Attorney General\)](#), 2011 SCC 53 (Mowat), have been criticized for significantly curtailing the power of human rights tribunals in Canada. In *Mowat*, which involved a successful sexual harassment complaint against the Canadian Forces, a unanimous court held that the Canadian Human Rights Tribunal does not have jurisdiction to award legal costs, a decision which will limit the ability of future complainants to fund such challenges.

In *Figliola*, a majority of the court found that the B.C. Human Rights Tribunal's decision to assert jurisdiction over a complaint already dealt with by the Workers' Compensation Board was patently unreasonable. Section 27(1)(f) of the *Human Rights Code* is not "a statutory invitation either to "judicially review" another tribunal's decision, or to reconsider a legitimately decided issue in order to explore whether it might yield a different outcome," said the court.

The section is oriented instead towards creating territorial respect among neighbouring tribunals, including respect for their right to have their own vertical lines of review protected from lateral adjudicative poaching. When an adjudicative body decides an issue within its jurisdiction, it and the parties who participated in the process are entitled to assume that, subject to appellate or judicial review, its decision will not only be final, it will be treated as such by other adjudicative bodies. The procedural or substantive correctness of the previous proceeding is not meant to be bait for another tribunal with a concurrent mandate. (para. 38)

These articles discuss the decisions:

- [Canadian Human Rights Commission v. Canada \(AG\): SCC Decision Shapes Dim Reality For Human Rights Complainants](#) and [Neighbouring Tribunals and 'Lateral Adjudicative Poaching': Forum Shopping for Human Rights in British Columbia v. Figliola](#), both from The Court;
- [Ruling Punishes Successful Complainant](#), *Canadian Lawyer*; and
- [One-Two Punch from Top Court](#), *Lawyers Weekly*.

Pension Benefits Changes In Force January 2012

[The Pension Benefits Amendment Act](#), S.M. 2011, c.23, which received royal assent June 16, 2011 and will come into force January 1, 2012, provides additional ways to enforce *The Pension Benefits Act* and clarifies legal authority respecting multi-jurisdictional pension plans. The Office of the Superintendent - Pension Commission's [Policy Bulletins and Updates](#) offer detailed guidance on changes to pension legislation and compliance issues. See, for example, [Update 11-06](#) (which discusses enforcement of the new legislation); [Policy Bulletin 8](#) (which sets out the process to follow when converting a defined benefit plan to a defined contribution plan); and [Policy Bulletin 9](#) (which discusses how to terminate or wind up plans).

Labour and Employment Law News

These recent articles, blog posts and newsletters deal with labour and employment law topics:

- [Labour and Employment Law Perspective](#) - The November edition of the CBA National Labour and Employment Law section newsletter contains several articles on labour law issues, including this handy [summary](#) of the federal and provincial legislation governing workplace privacy protection, this [article](#) on how appeal courts have used the *Keays* decision to limit the awarding of aggravated damages for mental distress, and this [update](#) on random alcohol testing in the workplace.
- [Lawyers usurping HR practitioners in training work](#) - Businesses are increasingly hiring lawyers to train staff on human resources issues according to this *Law Times* article, particularly in the areas of harassment, discrimination, workplace investigations and terminations. The following item is an example of the kind of advice one law firm provides clients on the issue of terminations.
- Terminations 101 (Parts [1](#), [2](#), and [3](#)) - This series of posts on terminations from the Canadian HR Law blog summarizes the issues human resources professionals need to know to avoid liability in employee terminations.
- [Have we lost our tolerance for strikes?](#) - This *Law Times* editorial questions whether the public response to recent government interventions in labour disputes is a sign we have lost our tolerance for work stoppages and what this means.

2012 MBA Mid-Winter Meeting

The Manitoba Bar Association Mid-Winter Meeting will be held January 19-20, 2012 at the Fort Garry Hotel. Programs that may interest labour and employment law lawyers include:

- A full day Administrative Law Boot Camp - which will deal with advocacy before administrative tribunals and judicial review (January 19); and
- An Employment Law Update - reviewing the most recent cases on *Wallace* damages, restrictive covenants, and other developments (January 20).

Watch the Manitoba Bar Association [website](#) for further details.

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