DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

Introduction

[1] The worker was hired as a general manager of luxury bed-and-breakfast facility in 2014. The co-owner of this facility (and the worker's employer at the material time) is Mr. L. The worker's employment was terminated effective October 24, 2017 (by way of a letter from Mr. L dated October 13, 2017), allegedly for just cause. Around the time of this letter, the worker prepared a video which spoke in highly disparaging terms about Mr. L and about his business. The worker regrets making this video and says that it reflected his significantly deteriorated mental state at the time. Mr. L considers the video to be defamatory and has demanded that the worker not show it to anyone or use it in a manner that might impact his business in a negative way.

[2] Within a few days of receiving Mr. L's letter of October 13, 2017, the worker retained legal counsel. Through back-and-forth negotiations between the parties' respective lawyers over the next few weeks, an agreement was reached in which the worker was paid various sums of money, at various times, in exchange for the worker executing a non-competition and non-disparagement agreement, and for both parties executing a mutual release agreement. Item C of the recitals of the final agreement executed by the parties explains that the parties "reached the following agreement in full and final settlement of all issues in dispute between the parties." As was made clear in the documents exchanged between counsel during the negotiation process, the worker's counsel was seeking compensation for the termination of the worker's employment (including compensation for the circumstances and effects of the termination of the worker's employment, along with legal fees). The worker also desired an assurance that Mr. L would not commence an action in defamation against him for the video.

[3] A few weeks after this settlement agreement had been executed (and the funds disbursed), the worker filed a complaint with the Workers' Compensation Board, operating as WorkSafeBC (Board), on the grounds that his employer had retaliated against him for raising occupational health and safety concerns, contrary to section 48 of the *Workers Compensation Act* (Act)[1]. The Board investigated this matter by obtaining submissions and documents from the parties.

[1] References to section numbers in the Act throughout my decision may be different from the decision under appeal. The Act was reorganized and renumbered under the *Statute Revision Act* (RSBC 1996, c 440) effective April 6, 2020. All references to the Act in this decision refer to the *Workers Compensation Act* (RSBC 2019, c 1). Unless otherwise indicated, it should be noted that, despite the different section numbers, the relevant provisions of the Act, and the applicable legal tests, are the same in both versions.

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[4] The essence of the worker's complaint was that he was required to live on the employer's property, under unsafe conditions, and he engaged in ongoing negotiations with Mr. L regarding his accommodations and other matters. He also alleged that Mr. L bullied and intimidated him in a number of ways, despite the worker's objections. In particular, the worker stated that he reported bullying and harassment to his employer in early October 2017, and his employment was terminated shortly thereafter. The worker expressed the view that the termination of his employment was due, at least in part, to the fact that he had raised these concerns with Mr. L.

[5] It is also worth noting that in March 2018 the worker filed a complaint with the Employment Standards Branch (ESB), under the *Employment Standards Act*, for monies he believed were owed to him in respect of his employment with this employer, and for the termination of his employment. In a written decision dated February 28, 2019 (the ESB Decision), a delegate of the director of Employment Standards dismissed the worker's complaint in its entirety. The primary basis for this decision was a conclusion that the release agreement executed between the parties was a binding agreement, entered into in good faith, and applied to that proceeding under the *Employment Standards Act*. This decision was confirmed by a decision of the Employment Standards Tribunal dated July 9, 2019.

[6] Similarly, around the same time, the worker also brought a complaint against the employer before the Human Rights Tribunal. In this complaint, the worker alleged, among other things, that the employer had discriminated against him on the basis of disability, contrary to the *Human Rights Code*. The facts underlying those allegations were essentially the same as those before the Board: relating to the conditions of the worker's employment, the adverse effect upon his physical and mental health associated with his working conditions, and the termination of his employment, which the worker alleged to have been high-handed and retaliatory in nature. This complaint was dismissed in a decision of the Human Rights Tribunal from October 2019 (the HRT Decision). As with the case of the ESB Decision, the primary basis underlying the HRT Decision to dismiss the worker's complaint was the effect of the release agreement, referenced above.

[7] The worker sought a reconsideration of the HRT Decision. On November 18, 2019, the Human Rights Tribunal denied the worker's request.

[8] In a decision dated September 19, 2018, a Board investigations legal officer (ILO) disallowed the worker's complaint under the Act. The ILO first considered the effect of the release agreement. He determined that it did not apply to prohibited action complaints under the Act because, among other things, the language of the release agreement itself did not specifically mention proceedings under the Act. The ILO accepted that the worker's employment had been terminated, but he did not accept that the worker had been coerced by his employer in any way. The ILO also found that the worker had reported bullying and harassment, along with a concern with exposure to fumes, which were protected activities under the Act. The ILO concluded that

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the worker's employment had been terminated close enough in time to the protected activities to have established a *prima facie* case of prohibited action.

[9] However, after considering the evidence, the ILO accepted the employer's explanation for events, and he found that, at the time of the worker's termination, the employment relationship between the parties had become irreparably damaged by the worker's "inappropriate and disrespectful conduct," and the worker had then advised Mr. L that he would not resign from his position without compensation. This caused Mr. L to respond by way of the letter of October 13, 2017. For this reason, the ILO found that the termination of the worker's employment was not motivated, in whole or in part, by the worker's participation in an activity protected by section 48 of the Act. Accordingly, he dismissed the worker's complaint.

[10] The worker now appeals the decision to disallow his complaint of prohibited action to the Workers' Compensation Appeal Tribunal (WCAT). The employer is participating in this appeal.

[11] A pre-hearing conference was held via telephone on January 29, 2020. Both the worker and Mr. L attended that conference, along with their representatives. The employer requested that this proceeding be bifurcated, and that the applicability and enforceability of the release agreement be decided before submissions on the merits were invited. The worker responded that he wanted to have an oral hearing on all matters. With regard to the release agreement, he asserted that he was not mentally capable of understanding the release agreement at the time that he signed it, and he did not read it or even understand its contents. I asked the worker if he was taking the position that his solicitor, who negotiated the release agreement on his behalf with the employer's counsel, did not properly advise him about the effect of the release agreement, its terms, and the nature of what had been settled before he signed it. The worker stated that this was the case. I also asked him if he was taking the position that his solicitor was aware that he was not in a mental state to understand the agreement but witnessed his signature, anyway, and then allowed the funds paid by the employer to be disbursed. The worker expressed the view that his condition at the time was clearly apparent, and it was likely that his solicitor was aware of his inability to appreciate or understand the terms of what had been settled.

[12] I then asked the worker if he wished to advance this argument of incapacity in order to challenge the enforceability of the release agreement, and he stated that it was his intention to do so.

[13] At that point, counsel for Mr. L stated, for the record, that she would require the worker's solicitor's file, and would likely intend to cross-examine the worker's solicitor about the worker's characterization of events at the time of his execution of the release agreement.

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[14] I then explained to the worker that, in order to succeed in this argument, he will have to waive solicitor-client privilege in respect of his instructions to the solicitor who negotiated the release agreement on his behalf, and I would then have to order him to produce his solicitor's file in respect of this matter, which would be reviewed by Mr. L and his legal counsel. I also advised that, since his solicitor witnessed this matter, and received instructions from him, then she would likely have to testify at the proceeding, in order to confirm the worker's account of what transpired. I stated that it would be unfair to the employer to not have the opportunity to question the worker's solicitor about this matter, given that the worker's characterization of events relied upon an assumption that his solicitor (who was a witness to these events) was aware of, and agreed with, the worker's characterization.

[15] To clarify, I stated that if this solicitor actually believed the worker lacked the capacity to understand what he was signing, and she allowed him to sign it, anyway, (and that she negotiated a settlement without obtaining sufficient instructions from him, and without explaining the terms of the settlement to him), she would likely have to testify to this effect at a hearing before this tribunal, and that doing so may cause professional embarrassment to her (along with potential liability), and may reveal information which the worker did not wish to provide to Mr. L and his legal counsel. The worker stated that he understood these things.

[16] With regard to the merits of the worker's complaint, I noted that the worker had provided the Board and WCAT with multiple pages of allegations of what may be described as different examples of malfeasance by Mr. L. It was not clear to me how the worker's complaint of prohibited action was actually being framed within all of these details and allegations, so it was not clear what issues were in dispute or how much time might be needed to schedule a hearing to deal with the merits of the worker's complaint.

[17] To this end, I adjourned the pre-hearing conference and directed the worker and his representative to consider the worker's position regarding the release agreement. If the worker wished to pursue his argument that he was incapacitated at the time he signed the release—and that his solicitor was aware of his incapacity and/or inability to understand the nature of the release agreement at the time that he signed it—then I wanted confirmation of this in writing, along with a confirmation that the worker was waiving solicitor-client privilege in respect of that matter. I stated that, in the absence of such an assertion in writing, I would not be inclined to entertain that argument on this appeal.

[18] Second, I asked the worker to summarize in writing: a) the nature of the health and safety concerns he experienced on the job; b) the time, date, and details of how he expressed his concerns about these matters to his employer; and c) the proximity between his communication of these concerns and the termination of his employment.

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[19] The worker's representative responded on March 19, 2020 via a letter which attached written statements from the worker. With regard to the mental capacity argument, the worker stated:

> *… As I mentioned in the conference, I did not EVER read the Release prior to signing it. I will therefore NOT be contacting my previous lawyer to discuss waiving solicitor/client privilege. I will, however, be submitting emails from my lawyer to opposing counsel that directly refers to my health that was seriously at risk, and the fact that any Settlement Agreement between [Mr. L] and myself was null and void in January of 2018. Correspondence between my lawyer and opposing counsel is not subjected to solicitor/client privilege.*
>
> [italics in original]

[20] The worker also provided a 16-page chronological summary of events during his employment between 2014 and 2017.

[21] On April 15, 2021, I held another pre-hearing conference with the parties. The worker stated that he was still taking the position that he signed the release agreement under "duress," and that he did not have the mental capacity to sign or understand the release. I advised the worker that, since he had not agreed to waive solicitor-client privilege in respect of this matter, or call his solicitor to give evidence before this tribunal, then, in accordance with his correspondence of March 2020, he was limited to advancing this argument based upon his subjective perception of his own mental and emotional states at the material time, any medical or psychological evidence he may wish to provide, and with reference to the correspondence exchanged between legal counsel during the negotiation process. I made it clear that it was not open to the worker to advance arguments about what his solicitor did or failed to do in the settlement process that went beyond what is contained in the correspondence between counsel during the negotiations. The worker's representative stated that she understood this.

[22] Mr. L's counsel then reiterated her request that this proceeding be bifurcated and the enforceability (and applicability) of the release agreement be decided first. In her view, the preliminary determination about the status and effect of the release agreement was a discrete question which did not require an oral hearing, and could therefore proceed before an oral hearing on the merits of this appeal (which was expected to take a number of days).

[23] Some discussion between the parties followed in relation to the need to hold an oral hearing to decide the preliminary question about the release agreement. It was noted that the worker's characterization of his own perception of his mental state at the material time was on the record, and there was effectively no way to challenge the worker's subjective perception through cross-examination. Since the worker's solicitor's file remained privileged, what remained, then, was the back-and-forth exchange between legal counsel, leading to the agreement which was executed by both parties—and the interpretations to draw from this documentary record was subject to argument from the parties. Further, the worker's subjective perception of the

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oppressive nature of those negotiations was on the record and was not being challenged. Instead, the employer was taking the position that the worker's subjective perception did not square with the objective reality of the negotiations.

[24] After considering these various factors, I determined that there was sufficient evidence available on the record, and through the worker's assertions of his perceptions about his condition and emotional state at the material time, that nothing would be gained by holding an oral hearing to determine the validity (and applicability) of the release agreement to the worker's complaint before this tribunal. I determined that this preliminary matter could proceed via written submissions.

[25] I made it clear to the parties that, once submissions were complete on this matter, I would issue a decision regarding the effect of the release agreement upon the worker's prohibited action complaint before the Board. I advised that if I were to find that the release agreement was a valid and binding agreement that applied to the worker's complaint of prohibited action, then this would likely dispose of the current appeal at the preliminary stage. However, if I were to find that the release agreement does not apply to the worker's complaint of prohibited action (as the ILO determined), then an oral hearing on the merits of the worker's claim would proceed.

[26] The worker's representative then provided a written submission about the release agreement, dated May 20, 2021. This document attached letters from a medical doctor and a nurse, dated October 19, 2017. These letters indicated that the worker was then unable to work due to "medical illness."

[27] Mr. L's legal counsel provided a submission in response dated September 20, 2021. The worker's representative then provided a reply dated October 21, 2021.

Issue(s)

[28] The issues before me on this appeal are:

1. Is the release agreement, executed by the worker on November 9, 2017, a valid and binding agreement that applies to the subject of the worker's claim of prohibited action against his employer?

2. If so, then is it appropriate for the worker's complaint of prohibited action to proceed on the merits?

Jurisdiction and Procedure

[29] As noted above, the Act was revised after this appeal was initiated. I am using the section numbers in the current version of the Act, rather than those that existed at the time this appeal was initiated.

[30] This appeal was filed with WCAT under section 288(1) of the Act, which provides for the appeal of a final decision by a review officer regarding compensation matters. Section 308 of the Act gives WCAT exclusive jurisdiction to inquire into, hear, and determine all those matters and questions of fact, law, and discretion arising or required to be determined in an appeal before it.

[31] This is a rehearing by WCAT, which means that WCAT reviews the record from previous proceedings and can hear new evidence. WCAT has inquiry power and the discretion to seek further evidence, although it is not required to do so. WCAT exercises an independent adjudicative function and has full substitutional authority. It may confirm, vary, or cancel the appealed decision or order.

[32] The standard of proof in this appeal is the balance of probabilities. WCAT panels are bound to apply the published policies of the board of directors of the Board, subject to the provisions of section 304 of the Act.

Background and Evidence

[33] A large volume of evidence has been provided by the parties in this case, in addition to the evidence obtained by the Board's investigation of the merits of the worker's complaint. I will not summarize all of it here. Instead, I will simply refer to the relevant evidence relating to negotiation, execution, and effect of the release agreement in my decision below.

WCAT Evidence and Submissions

[34] In her submission of May 20, 2021, the worker's representative expressed agreement with the ILO's analysis of the release agreement. First, the subject prohibited action complaint had not been filed at the time that the release agreement was drawn up and executed, "thus it could not be settled or withdrawn."

[35] Next, the worker's representative agreed with the ILO's reliance upon *Directors of London & South Western Railway Co. v. Blackmore* (1870), L.R. 4 H.L. 610 (*Blackmore*), which is one of the most cited authorities for the interpretation of release agreements. At page 623, the House of Lords stated:

> The general words in a release are limited always to that thing or those things were specially in the contemplation of the parties at the time when the release

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> was given. But a dispute that had not emerged, or a question which had not at all arisen, cannot be considered as bound and concluded by anticipatory words of a general release.

[36] The worker's representative also agreed with the ILO's reliance upon *White v. Central Trust Co.* (1984), 7 D.L.R. (4th) 236, 54 N.B.R. (*White*), another commonly cited authority which applies the principles of *Blackmore*. In the *White* decision, the New Brunswick Court of Appeal held that it is both proper and necessary, when determining what was contemplated by the parties, to look at the specific context in which the document was executed, and to consider the surrounding circumstances to ascertain what the parties were contracting about.

[37] The worker's representative also agreed with the ILO's reliance upon *The Co-Owners, Strata Plan BCS 327 v. IPEX Inc*., 2014 BCCA 237 (*IPEX*), which stated (at paragraph 26):

> … While releases signed in the course of a settlement of a dispute are often worded in a broad and general fashion, appearing to cover the end of the world, they must be considered in the context of the dispute. This context often provides a limiting background from which an inference that the parties meant to apply it to the claims for the dispute may readily be made.

[38] The worker's representative asserted that, as noted by the ILO, the context of the dispute which was settled by the parties through the release agreement in this case did not involve any specific discussions about a complaint, or a potential complaint of prohibited action under the Act. Therefore, the release does not apply to the subject complaint, and this appeal should proceed on its merits.

[39] In the alternative, the worker's representative submitted that the circumstances surrounding the negotiation and execution of the release agreement suggest that it should not be enforced. She notes that, in the submission dated April 26, 2018, made to the Board in relation to this complaint, Mr. L's legal counsel relied upon the decision of the Human Rights Tribunal in *Thompson v. Providence Health Care*, 2003 BCHRT No 58 (*Thompson*). At pages 16 to 17 of that submission, Mr. L's legal counsel summarized the following factors from *Thompson* which are relevant to determining the validity of a release agreement:

1. The actual language of the release itself as to what is included, explicitly or implicitly.

2. Unconscionability, which exists where there is an inequality of bargaining power and a substantially unfair settlement. This does not, however, allow a tribunal to interfere with a settlement where it finds inadequacy of consideration.

3. Undue influence may arise where the complainant seeks to attack the sufficiency of consent. A plea of this nature will be made out where there has been an improper use by one party to a contract of any kind of coercion, oppression, abuse of power or authority, or compulsion in order to make the party consent.

4. The existence or absence of independent legal advice may also be considered. However, if a party has received unreliable legal advice, that may not affect the settlement.

5. The existence of duress (not mere stress or unhappiness) and sub-issues of timing, financial need, and the like, may also be factors.

6. The knowledge of the party executing the release as to their rights under the *Act*, and possibly, the knowledge of the party receiving the release that a potential complaint under the *Act* is contemplated.

7. Other considerations may include lack of capacity, timing of the complaint, mutual mistake, forgery, fraud, etc.

[40] Further, at paragraph 46, the *Thompson* decision stated:

> [46] Where a settlement agreement is alleged, it will be for the party seeking to rely on that agreement to prove first, the existence of a valid settlement agreement, and second, that the settlement agreement was intended to release the respondent from any further liability in respect of the human rights complaint in issue. Where those two facts are established, the burden will shift to the other party to show, taking into account the other factors discussed, that despite the existence of such a settlement agreement, the complaint should nonetheless be allowed to proceed. …

[41] With regard to the first factor listed in *Thompson*, the worker's representative notes that there is no mention of a prohibited action in the language of the release agreement itself. She also submits that the *contra proferentem rule* (an interpretative principle of contract law) supports a conclusion that any ambiguity in the language of the agreement should be construed against the interests of the party seeking to rely upon it. At page 4 of her submission, the worker's representative summarized this argument as follows:

> In effect, if [Mr. L's legal counsel] contemplated PA [prohibited action] in the drafting of this term and wanted it to be released then it was incumbent upon [Mr. L's legal counsel] to expressly state it in the wording. Failure to do so, in our respectful view, should be to the Employer's detriment as per the rules of equity.

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[42] With regard to the second factor in *Thompson*, the worker's representative asserts that there was unequal bargaining power between the parties at the time that the settlement was reached. The employer's initial offers withheld certain funds, knowing of the worker's "desperate need of this money" since he had been "illegally evicted" and was now "homeless and unemployed." Further, as part of the negotiations, the employer demanded that the worker pay back certain monies, which were eventually set off against the amounts payable to the worker.

[43] With regard to the third factor, the worker's representative submits that "this scenario allowed [Mr. L's legal counsel] to oppress the worker into signing the release."

[44] With regard to the fourth factor (the existence of independent legal advice), the worker's representative concedes that the worker was represented by his solicitor at the time that the release was negotiated and executed, but she reiterates that there is no mention of prohibited actions under the Act in any of the correspondence between counsel in this matter. Accordingly, she submits that this supports an inference that neither party received any legal advice regarding prohibited actions at the time that this release was executed.

[45] With regard to the fifth factor (duress), the worker's representative notes that the worker had been admitted to the hospital in the fall of 2017 and was under medical care for an ongoing mental health crisis. He was also in financial distress as a result of the loss of his employment, and lived with a partner who also had significant health concerns. Although not stated clearly, I interpret the worker's position to be that these cumulative personal difficulties left him with a significantly impaired ability to negotiate with his employer and resulted in him being forced to accept oppressive terms as a result of his vulnerability.

[46] With regard to the sixth factor from *Thompson* (the knowledge of the party regarding his or her rights), the worker's representative reiterates that there is no indication in the documentation that either party was made aware of the possibility of a prohibited action complaint under the Act. She acknowledges that the worker contacted the Board in early October 2017 to discuss bullying and harassment, but there is no indication that the possibility of a prohibited action complaint was then discussed.

[47] Finally, with regard to the seventh factor, the worker's representative reiterates that the worker was under active medical care, taking medication for anxiety and other psychological disorders, and was experiencing emotional distress. She submits that the worker did not read the release agreement before he signed it. She also notes that the worker's partner initially negotiated with Mr. L on the worker's behalf and the worker himself "played a very minor role in any negotiation process."

[48] In her submission in response, Mr. L's legal counsel asserted that it is no longer open to the worker to challenge the validity or enforceability of the release agreement because the ESB Decision and the HRT Decision dealt squarely with that matter and considered the worker's

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arguments about his mental capacity, vulnerability, lack of knowledge, and the balance of bargaining power—and rejected all of them. According to the principles expressed by the Supreme Court of Canada in *British Columbia (Workers' Compensation Board) v. Figliola*, [2011] 3 SCR 422 (*Figliola*), the decision of the BC Supreme Court in *Fox v. Scott Safety Supplies Services Inc.*, 2021 BCSC 842 (*Fox*), and a decision of another WCAT panel in *WCAT Decision 2015-0093*, this worker is estopped from attempting to re-argue the validity of the release agreement in light of the seven factors from *Thompson* discussed above because a decision on that matter has already been issued by other tribunals, and to allow that matter to be litigated again in the context of this proceeding would encourage "forum shopping"—which is something that the Supreme Court of Canada stated, in clear terms, should be discouraged.

[49] In the alternative that the worker is not estopped from challenging the validity of the release agreement under the *Thompson* factors, Mr. L's counsel responds to the worker's arguments on each of the seven factors. She notes that all negotiations leading to the release agreement were conducted between experienced legal counsel, and the worker was not directly involved in any of the negotiations. Further, notwithstanding the worker's subjective feelings, there is no objective evidence to suggest that the worker had problems with mental capacity which impaired his ability to instruct his legal counsel, discuss counter-offers with his legal counsel, or understand the import of what was being agreed. Further, in light of the detailed nature of the offers and counter-offers leading up to the final release agreement, the worker's assertions of vulnerability and being subjected to oppressive conduct amounting to "coercion" or "duress" have not been substantiated. In this regard, counsel for Mr. L relies upon the following passage from the ESB Decision at pages D9 to D11:

> 2) Did the Complainant have the capacity to sign the Settlement Documents?
>
> The Complainant argues that he did not have the mental capacity to execute the Settlement Documents. He noted that he tried to commit suicide shortly after receiving the Employers letter terminating his employment, that he was hospitalized and, when released, his health care professionals advised him not to return to the B and B property. He was medicated. He did not have the mental capacity to enter into a legally binding arrangement like the Settlement Documents. His lack of capacity means that he is entitled to the remedies available under the Act.
>
> There is a presumption that all persons have the mental capacity to exercise their legal rights and to make decisions for themselves. The Complainant has the onus of satisfying me that when he signed the Settlement Documents he did not have the necessary mental capacity to enter into a binding contract with the Employer.

In considering the Complainant's capacity or decision-making ability, I consider the evidence addressing his ability to understand relevant information, to appreciate his options and the reasonably foreseeable consequences of his decisions, and to make decisions. I focus on the process for him to retain, interpret, and manipulate information provided to him to allow him to make a decision. I acknowledge that the Settlement Documents, and any decisions regarding them, represent a reasonably complex situation calling for a higher degree of capacity than for simpler, more basic decisions.

The background for the signing of the Settlement Documents is that the Complainant and the Employer, through their respective lawyers, negotiated a resolution of all matters arising from the Complainant's employment, including its termination. The exchange of correspondence between the lawyers shows a rational consideration by the Complainant of the issues and of his options. Nothing suggests that he was not actively participating in the process, and providing sensible, reasonable responses and instructions to his lawyer to obtain the best possible resolution of the issues from him. It is notable that he felt the need for the Release to protect himself from any possible defamation suit from the Employer. I find that the Complainant understood and was able to assess his options and make sensible decisions. While subjectively he may have felt that he could not participate in the process of negotiating the Settlement Documents and that they did not represent his free will, viewed objectively the evidence, his action, and those of his lawyer acting on the Complainant's instructions, do not support this conclusion.

The Complainant has not met the onus on him. I find that the Complainant had the requisite mental capacity to enter into the binding contractual arrangement with the Employer in the Settlement Documents. I find that he was able to retain and interpret information, consider his legal alternatives, understand their consequences, and provide rational instruction to his lawyer.

I am satisfied that when the Complainant signed the Settlement Documents he had the legal capacity to do so and to bind himself by them.

3) Is there any reason not to enforce the Settlement Agreement?

There is a competing public interest against the interest in encouraging settlements of complaints. The Director will not enforce a settlement of claims under the Act if that Complainant signed the Settlement Documents without independent advice on terms that are very unfair when his bargaining power was seriously impaired. In these situations, it would be unconscionable to enforce the settlement.

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The Complainant bears the onus of satisfying me that the Settlement Documents are unconscionable. He must show both that there was unequal bargaining power, with the Employer having the greater power, that the Employer took advantage of this inequality and that, as a result of this, the Settlement Documents, when signed, represent a substantially unfair bargain and enforcing the settlement would be unconscionable.

The Complainant noted that the Employer is legally trained. The Employer knowingly ignored his obligation under the Act to pay all outstanding wages within 48 hours of terminating the Complainant's employment. The Employer forced him and his family from the B and B property and that they had nowhere to live and no income. The Complainant's financial and living situations forced him to sign the Settlement Document because he could not afford to fight the Employer, who refused to negotiate an honourable resolution to the issues arising from the termination of his employment.

The Employer had significant resources. There was an inequality in bargaining power, meaning that he had to accept what the Employer offered, or he and his family would be on the streets. The vast disparity between his situation and the Employers meant that he signed an unfair settlement under duress. The Director should not enforce it. An imbalance in bargaining power between the Employer and the Complainant is inherent in their employment relationship. In its inception, it was an act of submission; in its option, it was a condition of subordination.

I do not doubt that the Complainant faced difficulties arising from the Employer's termination of his employment. This is neither unusual nor unexpected. Loss of employment, whether anticipated and justified or not, as likely to affect the Complainant negatively as any change in his employment status likely had far-reaching repercussions. This, by itself, is not sufficient to find that the Employer coerced the Complainant into signing the Settlement Documents or took advantage of a superior bargaining position.

The Complainant retained a lawyer to represent him in matters arising from his employment and its termination. He faced an Employer who took a hard line in negotiating these issues. Ultimately, the Complainant, through his lawyer, agreed on the Settlement Documents. There were no direct negotiations between the Complainant and the Employer. The Complainant had a lawyer to protect his interest and to whom he provided instructions. With the exception of the Employer taking a hard line in his negotiations through his counsel, there is no objective evidence allowing me to conclude that the Employer took advantage of any inequality in bargaining power to force the Complainant to agree to an improvident or substantially unfair settlement.

> While the Complainant may have, subjectively, felt intimidated by the Employer's legal training and resources, objectively viewed there is no evidence suggesting that this affected his lawyer's negotiations with the Employer's lawyer or the content of the Settlement Documents. While there may have been unequal bargaining power, I find that the Settlement Documents are not patently unfair or unreasonable.

[50] Further, counsel for Mr. L notes that the HRT Decision reached a similar conclusion on the same issue. At paragraphs 66 to 71, the HRT Decision stated:

> [66] I will start with the obvious and what to me is a significant factor in this case: both parties were represented by lawyers when negotiating the Settlement Agreement and Mutual Release. While [the worker] now says he did not have effective assistance from a lawyer because the Respondents did not give him enough money to pay for comprehensive legal advice, the Respondents did agree to pay $3,000 for him to obtain advice. His lawyer wrote a number of times on his behalf to the Respondents and made what I see as reasonable settlement proposals given the circumstance. She explicitly stated those offers were on instructions from [the worker].
>
> [67] [The worker] also says he did not have capacity to understand what he was signing. I accept that around the relevant time, he was in considerable distress. However, there is a high standard to meet to show that one does not have legal capacity to enter into a contract. While [the worker] now says he did not understand the Mutual Release, the presence of lawyers – who work at two well-known Vancouver firms that represent parties in employment disputes – in my view went a long way towards mitigating any concerns about any diminished capacity he may have had, and also any concerns about duress, unconscionability, or undue influence.
>
> [68] In any event, the Tribunal must assume that when lawyers negotiate settlements on behalf of their clients, the clients are competent to do so. Respondents are also entitled to rely on a lawyer telling them they have their client's authority to settle: *Smith v. Nikkei Seniors Health Care and Saul*, 2005 BCHRT 469.
>
> [69] I have also considered that [the worker] says that, at the time, he had no choice but to accept the Settlement Agreement and Mutual Release because he was in financial distress; he says he was forced to live in his Volkswagen van because the Respondents had not paid him everything he was owed. However, the Respondents had originally taken the position they could fire him with cause and nevertheless initially made an offer to avoid litigation, albeit less generous

> than the offer from [the worker] that they eventually accepted. As I return to below, I do not see the settlement they ended up at as one that was unfair or inadequate.
>
> [70] After the parties had entered into the Settlement Agreement, [the worker's] partner wrote to [the employer] to ask him to pay more legal fees. It appears [the worker] had become dissatisfied after the fact because the settlement did not provide him with more than $3,000 for that expense. This suggests at least that it was only matters that arose after the settlement that led to [the worker's] dissatisfaction and to the numerous complaints he subsequently filed against the Respondents.
>
> [71] Further, I am persuaded that there was nothing unfair about the consideration given in exchange for the Mutual Release. [The worker] received more than the Respondents had initially proposed, and indeed it was his final offer – which he made in consultation with his lawyer – that the Respondents accepted. In the end, the parties agreed to a lump sum payment of $44,000 less required statutory deductions and certain other agreed on amounts, as well as two amounts that are not relevant to my analysis: two additional staggered payments of $5,000 less required statutory deductions for the non-competition agreement, and $3,571.43 for vacation pay less required statutory deduction. The parties also agree [the Employer] would provide a $3,000 cheque to [the worker's] legal counsel in trust. [The worker] obtained another benefit: the Mutual Release gave him protection from claims [the Employer] might make about the Video, which [the Employer] viewed as defamatory. [The Employer] also agreed not to disparage [the worker].

[51] Mr. L counsel submits that, having accepted the release agreement as valid, then the remaining questions are whether it pertains to the subject complaint, even though the language of the agreement did not specifically mention proceedings under the Act; and whether it should bind the worker, even though the subject proceeding had not been commenced at the time that the release agreement was signed.

[52] At page 14, Mr. L's counsel reproduces the relevant passage from the release agreement as follows:

> … [the parties] hereby remise, release and forever discharge each other, and, as applicable, the Parties' respective, officers, directors, employees, agents, successors, administrators, heirs, and assigns of and from any and all actions, causes of action, suits, debts, dues, accounts, costs, legal costs, contracts, claims and demands of every nature or kind, statutory or otherwise, which the Parties now have, or at any time hereafter have, in any way arising or

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> resulting from any cause, matter, or anything whatsoever existing, as to the present time….

[53] Counsel submits that, contrary to the assertion of the worker's representative, there is no ambiguity in this language as to what was being contemplated. It clearly states that "any and all" proceedings "statutory or otherwise" that either party had at the time that the agreement was signed "or at any time hereafter" in relation to anything that existed at the time that the agreement was signed. In this regard, all of the facts and circumstances alleged by the worker in relation to this complaint existed or had occurred by the time that the release was signed: his concerns about health and safety in his workplace and his living space, his concerns regarding bullying and harassment, his discussion of the same with his employer, and the termination of his employment.

[54] Further, Mr. L's counsel submits that the offers and counter-offers between counsel leading up to the finalization of the release agreement make it clear that the parties wished to achieve a global settlement of all possible disputes between them.

[55] She notes that it is well established that there is no requirement that a complaint of prohibited action be commenced before it can be affected by a release agreement, nor is there a requirement that the terms of the release agreement must specifically mention a prohibited action complaint before being construed as applying to prohibited action complaints under the Act. In this regard, counsel for Mr. L relies upon *WCAT Decision A2001197* (dated March 10, 2021) which canvassed the law and prior WCAT decisions on point and held (at paragraph 36):

> [36] I find it would require a narrow interpretation of section 50(1) to conclude the Board would be compelled to decide a complaint that was not previously filed but was already settled by the parties. Indeed, the exploration of the settlement agreements and releases evidenced in various previous WCAT decisions illustrates that the Act intends for parties to be able to settle such complaints. Say, for example, a worker were to allege an employer engaged in prohibited action and the worker and employer both, through legal counsel, then arrived at a settlement agreement regarding that complaint. I find a fair, large, and liberal interpretation of section 50(1) is that the parties are able to negotiate settlements of prohibited action matters without the worker first having filed a complaint with the Board under section 49(3) of the Act. The language, "is settled" in section 50(1) should be interpreted to include a settlement that preceded the filing of a prohibited action complaint.

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[56] Counsel for Mr. L asserts that the ILO's analysis of this question, and his application of the test in *Blackmore*, was too narrow, and failed to appreciate all of the relevant facts, including the back-and-forth negotiations between the parties of a variety of matters, including the worker's entitlement to damages relating to the termination of his employment. At page 47, she states:

> … while the Mutual Release does not expressly say "prohibited action complaints", on a review of the express language of the Settlement Agreement and the Mutual Release as a whole using their ordinary and grammatical meaning and considering the surrounding circumstances, it is sufficiently broad to encompass and capture the subject matters of the Complaint and it does so implicitly. Were it otherwise, parties to a settlement and release would have to exhaustively set out every conceivable action that could arise from the employment relationship or the termination thereof, and enumerate each ground, or risk having the release be of no force or effect. The Employer submits that this would have a chilling effect on parties' willingness to settle disputes and ignores the purpose of a release.

[57] In support of this interpretation, counsel refers to the recent decision of the Supreme Court of Canada in *Corner Brook (City) v. Bailey,* 2021 SCC 29, 460 DLR (4th) 169 (*Corner Brook*). In that decision, Rowe J stated clearly (at paragraph 3):

> … The Blackmore Rule has outlived its usefulness and should no longer be referred to. Any judicial tendency to interpret releases narrowly is not a function of any special rule, but rather a function of releases themselves.

[58] Rowe J went on to state that a release agreement is a type of contract, and is therefore subject to interpretation in the same manner as other types of contracts. In particular, as paragraph 27, he rejected an overly narrow interpretation of the application of a release agreement, which had been associated with jurisprudence relying upon *Blackmore*. To this end, he stated as follows:

> [27] A release can cover an unknown claim with sufficient language, **and does not necessarily need to particularize with precision the exact claims that fall within its scope.** In entering into a release, the parties bargain for finality, or as Lord Nicholls put it, "to wipe the slate clean": *Ali*, at para. 23. The releasor takes on the risk of relinquishing the value of the claims he or she might have had, and the releasee pays for the guarantee that no such claims will be brought. The uncertainty or risk that is allocated to the releasor is precisely what the releasee pays for. Of course, difficulty can arise in deciding what wording is sufficient to encompass the unknown claim at issue in a given case. However, it is clear that releases can encompass such claims, and the Blackmore Rule has not been interpreted to hold otherwise.
>
> [emphasis added]

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[59] Counsel for Mr. L submits that, in accordance with the principles explained by Rowe J in *Corner Brook*, all of the circumstances of the negotiation and execution of the release agreement support an interpretation that both parties intended that each of them be released from liability for **all** matters that could flow from the worker's employment and the termination of that employment. By clear implication, this includes a complaint of prohibited action under the Act. Therefore, she asks that this release agreement be relied upon, and that the worker's appeal be dismissed on a preliminary basis, without consideration of the merits of the worker's complaint.

[60] In a reply dated October 21, 2012, the worker's representative concedes that the worker made complaints under the *Employment Standards Act* and the *Human Rights Code* (which were eventually dismissed). However, a complaint of prohibited action under the Act is adjudicated through a "specific lens," which is different than the perspectives adjudicating disputes under the *Employment Standards Act* and the *Human Rights Code*.

[61] In answer to Mr. L's reliance upon the pre-conditions for issue estoppel discussed in *Fox*, the worker's representative submits that there is no evidence that a prohibited action complaint was considered by the negotiating parties at the time that the release was completed. Second the ESB Decision and the HRT Decisions are final. Finally, she submits that the parties or their privies are not the same in the other proceedings. This is because the worker is no longer represented by his previous lawyer and has a new representative in respect of the current matter.

[62] The worker maintains that the release agreement is not valid and ought not to be applied to the worker's complaint of prohibited action under the Act.

Reasons and Decision

[63] As noted above, I will not now consider the merits of the worker's complaint of prohibited action against his employer. I am limited in this decision to considering the effect of the release agreement signed by the worker in November 2017, some weeks before the subject complaint had been commenced.

[64] As observed by the panel in *WCAT Decision A2001197*[2], it is possible for parties to "settle" prohibited action complaints privately. A prohibited action complaint is commenced by a worker

[2] Prior WCAT decisions do not have binding authority, but they may have persuasive authority. I find the reasoning and discussion of the law in *WCAT Decision A2001197* persuasive, and I adopt it as my own.

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under section 49 of the Act. Following the commencement, it must be investigated and adjudicated. In this regard, section 50 of the Act states, in part, as follows:

> (1) If the Board receives a complaint under section 49(3), it must immediately inquire into the matter and, **if the complaint is not settled or withdrawn**, must …
>
> [emphasis added]

[65] In other words, the threshold consideration, before a prohibited action complaint may be investigated and adjudicated on its merits, is to determine if the complaint has been "settled" or "withdrawn." The clear implication of this language is that if the complaint has actually been settled or withdrawn, then it should not be adjudicated on its merits.

[66] The worker's first argument in this case is that, in November 2017, he had not yet started his complaint to the Board under section 49 of the Act. Therefore, it did not exist to be "settled" or "withdrawn," in a technical sense. For this reason, the release agreement cannot apply to it—even in the event that the release agreement did contain specific language relating to prohibited action complaints under the Act (which it did not).

[67] For reasons well explained by the panel in *WCAT Decision A2001197,* I do not find this argument persuasive. In fact, to find otherwise would potentially allow workers to negotiate in bad faith and specifically agree in writing to release an employer from liability relating to a prohibited action complaint which may be commenced in the future (and receive consideration for the same), and then file such a complaint with the Board after the agreement had been executed and finalized, which the Board would then be compelled to adjudicate on its merits, contrary to the expressed wishes of the parties in the release agreement.

[68] I am satisfied that if the release agreement in this case was a valid agreement which applies to prohibited action complaints under the Act, then it would satisfy the definition of "settled" within the meaning of section 50(1) of the Act, quoted above.

Issue Estoppel

[69] The worker's main argument on this application is that the release agreement is not valid due to "coercion," "duress," and other factors. He has provided clear personal explanations of his difficult mental and physical states at the time that the release was negotiated. From his perspective, his circumstances were dire, and he simply wanted the conflict with his employer to end in order to minimize the distress he was then experiencing. Therefore, he signed the release, even though its terms were harsh and were contrary to his own preferences or desires.

[70] The employer submits that the worker has actually made these arguments before, in relation to the same release agreement, pertaining to the same facts surrounding the termination of his

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employment and the negotiation of the release agreement—and these arguments were rejected by other tribunals who found the release agreement to be valid. Accordingly, the employer submits that the worker is estopped from making this argument again.

[71] For the reasons that follow, I agree with the employer on this point.

[72] First, I agree that the *Figliola* decision is directly on point. In that case, an injured worker had challenged the consistency of one of the Board's compensation policies with the *Human Rights Code* before the Review Division. A review officer then wrote a decision which found the impugned policy to be consistent with the *Human Rights Code*. After receiving this decision, the worker brought a complaint before the Human Rights Tribunal, alleging that the compensation policy in question was inconsistent with the *Human Rights Code* (essentially the same argument that had been made before the review officer). The Board then applied to the Human Rights Tribunal to discontinue that proceeding on the basis that the review officer's decision remained binding on the question. Eventually, this dispute went to the Supreme Court of Canada.

[73] Writing for the majority, Abella J explained (at paragraph 1) that parties who bring disputes before administrative bodies hope that their matters will be resolved expeditiously, and they do not expect "to have those same issues relitigated by a different adjudicator in a different forum at the request of a losing party seeking a different result."

[74] Abella J noted that both the Human Rights Tribunal and the review officer in that case had jurisdiction to decide whether the impugned Board policy contravened the *Human Rights Code*. The question was whether the review officer's decision on the matter estopped the Human Rights Tribunal from making a later (and potentially contrary) decision on the same issue.

[75] At paragraph 27, Abella J explained:

> [27] The three preconditions of issue estoppel are **whether the same question has been decided**; **whether the earlier decision was final**; and **whether the parties, or their privies, were the same in both proceedings** (*Angle v. Minister of National Revenue*, 1974 CanLII 168 (SCC), [1975] 2 S.C.R. 248, at p. 254). These concepts were most recently examined by this Court in *Danyluk*, where Binnie J. emphasized the importance of finality in litigation: "A litigant . . . is only entitled to one bite at the cherry. . . . Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided" (para. 18). Parties should be able to rely particularly on the conclusive nature of administrative decisions, he noted, since administrative regimes are designed to facilitate the expeditious resolution of disputes (para. 50). All of this is guided by the theory that "estoppel is a doctrine of public policy that is designed to advance the interests of justice" (para. 19).
>
> [emphasis added]

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[76] The reference to the three pre-conditions mentioned in the *Angle* decision (in bold above), are the same factors which were re-stated by the *Fox* decision, relied upon by Mr. L on this application.

[77] At paragraph 36, Abella J explained that tribunals:

> … should be guided less by precise doctrinal catechisms and more by the goals of the fairness of finality in decision-making and the avoidance of the relitigation of issues already decided by a decision-maker with the authority to resolve them. Justice is enhanced by protecting the expectation that parties will not be subjected to the relitigation in a different forum of matters they thought had been conclusively resolved. Forum shopping for a different and better result can be dressed up in many attractive adjectives, but fairness is not among them.

[78] I turn now to consider whether the three pre-conditions for issue estoppel, accepted by Abella J in *Figliola*, are present in this case. I reiterate that the focus of my analysis is limited to the validity of the release agreement, without regard for the merits of the worker's complaint of prohibited action. Therefore, the worker's reply submission does not assist his cause because it conflates the "special lens" of adjudicating the merits of the worker's complaint with the simple question of the validity of the release agreement.

[79] In this case, it is clear that the designate of the director of Employment Standards, the Human Rights Tribunal, and the ILO each had the jurisdiction to consider the validity of the release agreement as it pertained to the proceedings before them. The ILO's decision was the first decision to consider the release agreement, but the ILO did not address its validity, per se. Instead, he simply found that the agreement did not apply to prohibited action complaints under the Act; therefore, regardless of its validity, it did not prevent this complaint from proceeding on its merits.

[80] As a result, the first decision which actually considered the validity of the release agreement was the ESB Decision of February 28, 2019, which was followed by the HRT Decision of October 2019. For reasons which are unclear, the HRT Decision did not consider, or apply, the principles of issue estoppel, but reached the same conclusion as the ESB Decision regarding the release agreement. Both of these decisions considered the same evidence about the circumstances of the negotiation and execution of the release agreement and determined that it was a valid agreement. In particular, the analysis contained in both of those decisions supported a conclusion that the surrounding facts relating to the negotiation and execution of the release agreement did not reflect the concerns expressed in *Thompson* regarding the legitimacy of the bargain reached between the parties. Further, both of those decisions were final decisions because they eventually proceeded through the appellate and reconsideration process, and were not judicially reviewed.

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[81] Finally, it is clear that the same parties—the worker and Mr. L—are the parties to the release agreement and were also the parties to the Employment Standards and Human Rights proceedings, and to the current appeal. The fact that the worker has been represented by different persons in the various proceedings than his counsel who negotiated the release agreement on his behalf does not change the fact that the parties to all of these matters have been the same.

[82] For these reasons, I am satisfied that the three pre-conditions for issue estoppel (reiterated by Abella J in *Figliola*) are present in this case. I am satisfied that the ESB and HRT Decisions remain binding determinations that the release agreement is a valid agreement and governs the parties. I find that the principle of issue estoppel prevents me from reaching a different conclusion on essentially the same facts as reached by the designate of the director of Employment Standards and the Human Rights Tribunal, regarding the validity of the subject release agreement.

The Validity of the Release Agreement

[83] In the event that I am wrong, and it remains open to me to consider this question anew, I have reviewed all of the records and documents in the materials before me, including the documents specifically referred to by the parties, and I have considered the worker's characterization of his perception of events. After so doing, I reach the same conclusion as the ESB and HRT Decisions on this matter, for largely the same reasons explained in those decisions.

[84] I conclude that both parties were represented throughout the negotiation and execution process by experienced legal counsel, and it is abundantly clear to me that the positions of both parties were clearly articulated through the offer and counter-offer process. Both parties were aware of their own vulnerabilities and strengths in the negotiation. (The worker's counsel was clearly aware that the worker could potentially be liable for the video, and was also potentially liable for certain expenses claimed by the employer.) Therefore, the final settlement achieved between these parties reflected some type of compromise by both parties, when compared to their initial positions. As a result of the eventual settlement, the worker received a substantial sum of money from his employer, which represented the equivalent of a number of months' worth of income at his employment salary, in addition to other sums of money.

[85] Further, despite the worker's assertions of his mental state, and of his failure to read the final document before signing it, the medical and psychological evidence before me does not go far enough to support a conclusion that the worker was not mentally competent, at the material time, to understand what he was agreeing to or signing.

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[86] During this negotiation, the worker was represented by legal counsel who worked for law firm which has particular experience in disputes between employers and employees[3]. On the evidence before me, there is no basis to assume that the worker's solicitor did not explain the implications of the release agreement to him, and satisfy herself that he understood the same, before allowing him to execute the document. It is to be expected that legal counsel who negotiate settlements on behalf of clients a) receive instructions about the acceptable terms of settlement from their clients; and b) explain the details of the final settlement to clients before presenting the document to their client for signature. Indeed, Chapter 3 of the *Professional Conduct Handbook* for lawyers in this province imposes obligations upon lawyers in cases where a client cannot "adequately instruct counsel for any reason," including for reasons relating to mental incapacity. There is no indication that this worker's solicitor undertook any such steps in accordance with these obligations at the time that the release agreement was negotiated and executed. Therefore, in the absence of any evidence of professional negligence on the part of this solicitor (which is not before me due to solicitor-client privilege protecting the details of the interaction between this solicitor and the worker), there is no basis to assume that counsel acted in any way other than in accordance with professional obligations. This supports an inference that the worker did not present to his solicitor at that time in a manner which caused her to question his mental competence or his ability to provide adequate instructions.

[87] In a case where a settlement has been achieved between lawyers after a process of negotiation, a resulting release agreement is not voided by the fact that one of the parties may not have read it before signing it, especially when that party's lawyer may be the only person witnessing his or her signature. In such cases, it is reasonable to assume that legal counsel has taken on the responsibility for explaining the details and nuances of the agreement to the client. Indeed, from the perspective of the opposing party, it is necessary to assume that legal counsel is operating on the instructions of his or her client, with the authority to settle a dispute on behalf of the client. If it were not this way, there would be no ability (or incentive) for lawyers to negotiate at all. Concomitant with the reliance upon counsel's ability to negotiate on behalf of a client is an expectation that counsel discharge the obligations of discussion and explanation of the terms of the settlement with their clients. This is so because, when the client eventually signs the agreement, the opposing party can take solace with the expectation that the agreement has been accepted in full, as written. Therefore, in the absence of evidence that this worker's solicitor failed to discharge these obligations in this particular case (and such evidence is not before me, due to solicitor-client privilege in relation to this matter), there is no basis to question the validity of the release agreement between the parties.

[88] For all of the above reasons, I find the release agreement to be a valid agreement that was in force at the time that the worker brought his complaint of prohibited action under section 49 of the Act to the Board.

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[3] So noted on that lawyer's letterhead.

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Does the Release Agreement Apply to the Subject Prohibited Action Complaint?

[89] There is no doubt that the language of the release agreement itself makes no mention of prohibited action complaints, or any other complaints under the Act. In fact, it also does not mention any complaints under the *Human Rights Code* or the *Employment Standards Act*, either.

[90] The worker's first argument is that the absence of a specific mention of a prohibited action complaint in the text of the release agreement should be construed against the employer, either under the *Blackmore* principle, or under the *contra proferentem* principle of contract interpretation. I do not find this submission persuasive.

[91] As numerous prior decisions of this tribunal, other tribunals (including the ESB and HRT Decisions in relation to this very release agreement), and courts at all level (including the *Corner Brook* decision of the Supreme Court of Canada) have held, a specific matter or cause of action does not need to be explicitly identified in a release agreement in order to be covered by it. Indeed, if this were not the case, then the worker himself would not be protected from an action for defamation from Mr. L because the release agreement in question does not specifically identify a cause of action in defamation as a matter being released.

[92] Instead, the ultimate question is whether the type of claim or cause of action being considered is likely captured by the agreement in question, having regard to the circumstances under which the agreement was reached. As Rowe J explained in *Corner Brook*, the law of contract interpretation in Canada has been settled since the decision of *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53 (*Sattva*). At paragraph 20, he observed:

> [20] This Court set out the current approach to contractual interpretation in *Sattva*. *Sattva* directs courts to "read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract": para. 47. This Court explained that "[t]he meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement", but that the surrounding circumstances "must never be allowed to overwhelm the words of that agreement": paras. 48 and 57. "While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement": para. 57. This Court also clarified that the relevant surrounding circumstances "consist only of objective evidence of the background facts at the time of the execution of the contract. . . , that is, **knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting**": para. 58. [emphasis added]

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[93] Looking at the context of the negotiations in question, it is clear that both the worker and Mr. L were contemplating a number of different claims against the other, arising out of the worker's employment and the termination of that employment. It is also clear that the scope of the matters discussed between the parties' lawyers related only to the relationship between the parties framed by that employer-employee relationship. For example, there can be no suggestion that the negotiations addressed (or even considered) things that might have happened during the parties' respective childhoods. Therefore, the reference in the recitals to "all matters in dispute between the parties" was clearly framed in terms of the dispute between the parties relating to the worker's employment and the termination of the same.

[94] As noted above, the text of the release agreement itself did not specify any particular cause of action, yet it has been clearly found to apply to actions under the *Employment Standards Act* and *Human Rights Code*. There are a number of possible causes of action the worker could have brought against his employer in relation to his employment (and the termination of the same) in October 2017. Some possible causes of action would be under the *Employment Standards Act*, *Human Rights Code*, the Act, and through common law claims in contract or tort. Similarly, Mr. L might have had claims against the worker for contribution/indemnity, tort, or contract, or other under some statute. At the time that the release agreement was negotiated, both parties were represented by experienced legal counsel, and it is reasonable to assume that both counsel were alive to all of these potential liabilities.

[95] It is also the case that the facts underlying the current prohibited action complaint were already present at the time of the negotiation between the lawyers. By this, I mean that it would have potentially been open to the worker to bring this complaint to the Board in October 2017 had he decided to do so. Given that the worker's solicitor at the time practiced in the field of employment law, there can be no doubt that both she and Mr. L's counsel would have been aware of the possible causes of action available to the worker following the termination of his employment in October 2017, and that one of the possible causes of action included a prohibited action complaint under the Act.

[96] In this context, it would make good sense for the language of the mutual release to be worded as broadly as possible to capture all of the varying claims or causes of action that each party might have against the other arising out of the worker's employment, and the end of that employment. Given that the actual wording of the release in question specified that it applied to "any and all actions, causes of action, suits, debts, dues, accounts, costs, legal costs, contracts, claims and demands of every nature or kind, statutory or otherwise," both the plain meaning and the circumstances support an interpretation that it was intended to apply to any and all claims that the worker might bring against his employer relating to his employment, and the termination of his employment. For these reasons, I am satisfied that prohibited actions under the Act were considered by the parties and were captured by the spirit and letter of the release agreement in question. In accordance with the principles explained in *Sattva*, and adopted in *Corner Brook*, I find that the release agreement, executed by the worker on November 9, 2017, is a valid and

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binding agreement that applies to the subject of the worker's claim of prohibited action against his employer.

[97] I vary the ILO's decision on this point.

Should the Worker's Complaint of Prohibited Action be Adjudicated on the Merits?

[98] For reasons I have explained above, I am satisfied that the subject complaint of prohibited action, started by the worker in early 2018, had been fully "settled" by the parties by way of a release agreement executed by the worker on November 9, 2017. Therefore, in accordance with section 50 of the Act, the worker's complaint should not proceed to be adjudicated on its merits.

[99] For these reasons, I am satisfied that this appeal can be disposed of at this stage, and there is no need to proceed any further to consider the merits of the worker's complaint of prohibited action.

Conclusion

[100] For the reasons set out above, I deny the worker's appeal, and, further to the employer's request, I vary the decision of the ILO dated September 19, 2018. I find that the release agreement, signed by the worker on November 9, 2017, was a valid agreement which applies to the subject complaint of prohibited action. For this reason, in accordance with section 50 of the Act, I find that the worker's complaint should be dismissed at the preliminary stage, without proceeding to adjudication on its merits.

Appeal Expenses

[101] There has been no request for reimbursement of any appeal expenses. Therefore, I make no order in that regard.

Anand Banerjee
Vice Chair

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