| Canadian Human Rights Tribunal | CANADA | Tribunal canadien des droits de la personne |
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**BETWEEN:**

**BRUCE BRINE**

**Complainant**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

HALIFAX PORT AUTHORITY

AND TRANSPORT CANADA

**Respondents**

# RULING ON THE APPLICATION TO HEAR THE OBJECTION REGARDING SETTLEMENT PRIOR TO THE HEARING

**MEMBER:** Dr. Paul Groarke 2003 CHRT 17

**2003/04/29**

[1] The following ruling deals with a request that the Tribunal deal with a preliminary objection to the complaint before hearing the evidence on the merits of the case. The objection is that the Complainant signed a full release with respect to the matter now before the Tribunal. The present controversy concerns the question whether the objection should be dealt with prior to the hearing or after the evidence has been heard.

[2] It is agreed that the Complainant suffered a nervous breakdown while he was employed by the Halifax Port Authority and was subsequently dismissed. The employer states that the dismissal was for just cause. The complaint alleges that this constituted discrimination on the basis of disability under section 7 of the *Canadian Human Rights Act*. The Respondent goes further, however, and argues that the Tribunal has no jurisdiction to proceed with an inquiry, since the Complainant signed a settlement agreement covering the matter. This agreement apparently contained a release stating that the Respondent has satisfied its obligations under the *Canada Labour Code* and the *Canadian Human Rights Act*.

[3] The Human Rights Commission originally declined to deal with the complaint under section 41(1)(b) of the *Canadian Human Rights Act*, on the basis that the Complainant had entered into the settlement. This was reviewed in the Federal Court, in *Brine* v. *Canada (Attorney General)*, [1999] F.C.J. No. 1439 (Q.L.), which returned the matter to the Commission. Justice Lemieux found that the Commission had failed to consider a report on the Complainant's psychological condition by Mr. Dunphy, one of its own investigators. In paragraph 44 of the report, the Investigator wrote:

> Evidence provided by the Complainant's psychologist shows that the Complainant was not emotionally capable of representing his interests when he signed the settlement.

The Commission and Complainant are apparently now taking the position that the Complainant was unable to sign a binding release as a result of his psychological incapacity.

[4] The Commission and Complainant have argued that the Tribunal is not in a position to determine the validity of the settlement without a full evidentiary record. The Commission submits that the Tribunal:

> … cannot decide the ultimate fate of this complaint by way of a preliminary motion without … hearing the entire evidence related to the complaint.

The Respondent demurs. It argues that "the proper approach" is to have a separate hearing "to deal with the release issue, including evidence and argument", before the inquiry commences. This could also be dealt with in a voir dire at the outset of the hearing.

[5] In its submissions, the Commission suggests that the ruling from the Federal Court requires the Tribunal to decide the issue concerning the release after hearing the merits of the case. I do not follow the logic of such an argument. The ruling from the Federal Court deals specifically with the responsibilities of the Commission, which was established as an investigatory body with a mandate to pursue the resolution of complaints. At paragraph 39, Justice Lemieux holds that the Commission "is an administrative and screening body with no appreciable adjudicative role". The function of the Commission is "somewhat analogous to that of a judge at a preliminary inquiry". It was not established to try the case and does not have the authority to decide the matters that would normally come before a tribunal.

[6] The real issue before the Federal Court was whether the Commission had rejected the complaint without considering the evidence and circumstances before it. The Commission is not making the same kind of determination as the Tribunal, however, and cannot adjudicate the matter. If the decision from the Federal Court is significant before me, it is primarily because it establishes that there is a litigious issue between the parties on the settlement. In such a situation, it seems plain that a tribunal cannot determine whether the release is binding without a full evidentiary record. When I say this, I simply mean the full evidentiary record necessary to decide the issue. Whether this requires a full hearing of the case is open to debate.

[7] I am not as comfortable as the Respondent with its characterization of the matter as a question of jurisdiction, though the term "jurisdiction" has been used with considerable abandon in the caselaw. The basic position of the Respondent is nonetheless compelling. It seems unfair to enter into a full hearing when it is unclear whether there is a legal dispute, a *lis*, between the parties. The Respondent relies on the decision in *Chow* v. *Mobile Oil Canada*, [1999] A.J. No. 949 (Q.L.) (Alta. Q.B.), where the Court holds, at paragraph 100, that a similar issue before a Board of Inquiry raises a jurisdictional issue. It was therefore necessary to decide the issue before embarking on the hearing of the complaint. The Respondent argues, on the strength of this, that the present Tribunal cannot enter into an inquiry without hearing and resolving the objection.

[8] As I have said, I am inclined to think that the jurisdictional notion is overstated. Even if the release goes to the jurisdiction of the Tribunal to proceed, the Tribunal appears to have some latitude in the matter. In *Mohawk Council of Kahnawake* v. *Jacobs*, 1996 F.C.J. No. 757 (Q.L.), the Federal Court reviewed a decision of a Tribunal to hear all of the evidence in the case before deciding a jurisdictional issue. Justice Tremblay-Lamer held that the Tribunal is "master of its own proceedings" and refused to intervene. There are cases outside the federal arena that adopt the same position, such as *Newfoundland (Human Rights Commission)* v. *Newfoundland (Department of Health)*, [1998] N.J. No. 129 (N.C.A.).

[9] It follows that the Tribunal has the discretion to deal with the question concerning the settlement before or after the hearing, on the basis of what seems best in the circumstances before it. Although it is not available to me, I suspect that the present situation could be resolved by an order for security of costs in the civil courts. Should it become apparent at the end of the case that a hearing was unnecessary, the Respondent would at least have the comfort of knowing that it would receive some compensation for its pains. This is not possible in the human rights process, since the general consensus is that a Respondent is not entitled to costs. This may result in an unfairness. It is all very easy for the Complainant and the Commission to insist that all of the evidence be heard, when they know that the other party will have to bear so much of the freight.

[10] There is a related issue under section 48.9(1) of the *Act*, which states that proceedings (l'instruction des plaintes) before the Tribunal shall be conducted as "expeditiously" ("se fait . . . de façon expéditive") as possible in the circumstances. I think that this prescription applies as much to procedural and preliminary matters as to the hearing on the merits of the case. The Tribunal's empowering legislation accordingly supports the notion that a case should be decided summarily, if it is possible to do so. The Respondent may not be entitled to costs, or security for costs; it is nevertheless entitled to a prompt and efficient resolution of the matter. The Tribunal should be careful not to penalize a respondent by prolonging a case beyond its natural duration.

[11] There are reasons to believe, moreover, that issues relating to releases are inherently preliminary. This is evident in the caselaw under the *Rules of Court* in the various provinces. In *Sinclair-Cockburn Insurance Brokers Ltd. v. Richards* [2002] O.J. No. 3288 (Q.L.), for example, the Ontario Court of Appeal dealt with a rather confusing set of facts arising out of a fraudulent bond. At paragraph 14, the Court held as follows:

> As Mr. Cadsby, counsel for Wiggins, said during oral argument, his client paid a substantial sum of money to buy peace, not just peace from potential liability for a judgment, but peace from even having to respond to a claim from Richards. Sinclair-Cockburn signed an unqualified release. Wiggins is entitled to all the benefits that flow from that release, which include its reputational interest and its interest in not being dragged into a lawsuit.

The strength of this rationale may vary from case to case. It nonetheless brings in a set of interests that militates strongly in favour of an early settlement of the issues that arise as a result of a settlement between the parties.

[12] The present ruling does not go to the substance of the motion. That is intentional. The Complainant and Commission may want to argue that it is impractical to separate the issue regarding the settlement from the other issues in the case. I say this because they appear to be taking the position that the Complainant's psychological difficulties deprived him of his ability to enter into a binding agreement. If that is their position, there is an obvious argument that it will be impossible to determine whether the settlement is binding without hearing evidence on the nature and extent of his disability.

It may also be necessary to hear evidence with respect to the events that originally gave rise to the complaint. The issue is accordingly whether it is feasible to sever the issue regarding the settlement from the other issues in the case.

[13] The submissions before me do not address this issue. The matter will have to be dealt with at the beginning of the hearing, at which time I would invite counsel to advise me whether they feel it is possible to separate the issue regarding the release from the other issues in the case. I agree with the Respondent that it is preferable to decide the settlement issue, if that is possible, before proceeding further. The integrity of the hearing should be preserved as much as possible, however, and I do not see any reason to deal with this in a separate application. In the circumstances of the case, I think it is better to proceed by way of a voir dire. If it becomes apparent on hearing the evidence that the settlement is not binding, the evidence on the voir dire can then be applied to the hearing as a whole.

Dr. Paul Groarke

OTTAWA, Ontario

April 29, 2003

**CANADIAN HUMAN RIGHTS TRIBUNAL**

**COUNSEL OF RECORD**

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| TRIBUNAL FILE NO.: | T758/0803 |
| STYLE OF CAUSE: | Bruce Brine v. Halifax Port Authority and Transport Canada |
| RULING OF THE TRIBUNAL DATED: | April 29, 2003 |

APPEARANCES:

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| Barry Mason | For the Complainant |
| Giacomo Vigna | For the Canadian Human Rights Commission |
| Jane O'Neill | For Halifax Port Authority and Transport Canada |

This is quoted at paragraph 14 of the decision in the Federal Court.