IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Provincial Health Services Authority v. Briggs,* 2023 BCSC 1729

Date: 20231004
Docket: S231675
Registry: Vancouver

Between:

Provincial Health Services Authority

Petitioner

And

Todd Briggs

Respondent

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

Counsel for the Petitioner:	L. Robinson
Counsel for the Respondent:	S. Anderson
Place and Date of Hearing:	Vancouver, B.C. September 13, 2023
Place and Date of Judgment:	Vancouver, B.C. October 4, 2023

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I. Introduction

[1] The petitioner, Provincial Health Services Authority ("PHSA"), seeks a declaration under s. 30 of the *Human Rights Code,* R.S.B.C. 1996, c. 210 (the "*Code*"), that a release signed by the respondent, Todd Briggs, on November 27, 2020 (the "Release"), is binding on him and constitutes a complete bar to the complaint that he has since initiated against PHSA under the *Code*.

[2] Mr. Briggs acknowledges that he signed the Release. Moreover, he does not dispute that this court has the jurisdiction to make the declaration that PHSA seeks. However, he opposes the petition on the basis that he has raised a defence to the Release that ought to be adjudicated before the British Columbia Human Rights Tribunal (the "Tribunal"), rather than this court.

[3] For the reasons that follow, I have concluded that the petition should be dismissed.

II. Background Facts

[4] Mr. Briggs was formerly employed by PHSA as a computer programmer. When he was hired in July 2018, he disclosed to PHSA that he suffers from Multiple Sclerosis ("MS"). He deposes that in 2019, he began to suffer from memory loss and was losing the capacity to perform tasks that had not been a problem for him before. He deposes further that his managers noticed this and told him that he appeared to be having difficulty with software concepts, communicating with others and that he "just seemed out of it."

[5] On November 24, 2020, PHSA gave him notice of termination with effect the following day. At the same time, PHSA offered to settle any claim he may have against PHSA in respect of his employment or its termination by providing him with a series of severance payments equal to four months' salary. Mr. Briggs accepted that offer three days later. To indicate his acceptance, he signed the Release.

[6] The Release included a clause stating that Mr. Briggs agrees:

> …to remise, release and forever discharge PHSA … from any and all matter of … claims … arising out of my employment or the termination of my employment …

[7] The Release also included an acknowledgment by Mr. Briggs that in carrying out the terms of the settlement, PHSA "… will have satisfied all obligations under the … [*Code*]".

[8] PHSA subsequently made the payments contemplated by the settlement, culminating with a final payment on March 25, 2021.

[9] Mr. Briggs deposes that, while he was receiving those payments, he went to an MS clinic in January 2021 for testing. He learned only then of "the effect that my MS had on my mental abilities." In particular, he was told that his "mental impairments were so severe that it would be impossible for [him] to pursue further employment."

[10] On April 23, 2021, Mr. Briggs initiated a complaint against PHSA under the *Code*, alleging discrimination on the basis of disability and a failure to accommodate. In its response to the complaint, PHSA has pleaded, among other things, that the complaint ought to be summarily dismissed by the Tribunal under s. 27(1)(c) of the *Code*, as having no reasonable prospect of success, by virtue of the Release.

[11] Mr. Briggs deposes that he has "not filed a complaint or action in any other forum" and that he does not want to do so and has no plans to do so.

[12] In support of his contention that this petition should be dismissed, Mr. Briggs has adduced a medical report dated October 4, 2022, prepared by Dr. Virginia Devonshire, a neurologist who has been treating him since January 2011. Dr. Devonshire was asked, among other things, whether Mr. Briggs' medical condition could have compromised his capacity to understand the significance of the Release when he signed it on November 27, 2020. In response to that question, she wrote as follows:

> … I believe that Todd Briggs had cognitive problems that would result in impairment in attention/concentration and reduction in processing speed and

> comprehension of difficult material. These cognitive issues would definitely be worse when an individual is fatigued or under stress. Therefore, I would believe that Todd Briggs would have difficulty reading and fully comprehending [the Release] … However, the larger issue is that I do not think he had any insight that this was potentially a wrongful termination. He did not recognize his cognitive impairment and therefore would not understand that he should not be terminated because of poor performance, but should have been placed on disability or modified duties to accommodate his disability. He would therefore not recognize the need to seek assistance of a lawyer or other individual before signing such a document.

III. The Legal Framework

[13] Section 30(1) of the *Code* states as follows:

> If there has been a breach of the terms of a settlement agreement, a party to the settlement agreement may apply to the Supreme Court to enforce the settlement agreement to the extent that the terms of the settlement agreement could have been ordered by the tribunal.

[14] In support of the petition, PHSA relies on the combination of that provision, s. 32 of the *Code*, s. 17(2) of the *Administrative Tribunals Act*, S.B.C. 2004 [*ATA*], c. 45, and ss. 8(3) and 10 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 [*LEA*].

[15] The effect of s. 32 of the *Code* is to render s. 17 of the *ATA* applicable to the Tribunal. Subsection 17(2) of the *ATA* states as follows:

> If the parties reach a settlement in respect of all or part of the subject matter of an application, on the request of the parties, the tribunal may make an order that includes the terms of settlement if it is satisfied that the order is consistent with the enactments governing the application.

[16] Section 8(3) and 10 of the *LEA* states as follows:

> 8. (3) Any person, whether or not a party to a cause or matter pending before the court, who would have been entitled, but for this Act, to apply to the court to restrain the prosecution of it, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule or order, contrary to which all or any part of the proceedings in the cause or matter may have been taken, may apply to the court, by motion in a summary way, for a stay of proceedings in the cause or matter, either generally or so far as may be necessary for the purposes of justice and the court must make any order that is just.
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> …
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> 10. In the exercise of its jurisdiction in a cause or matter before it, the court must grant, either absolutely or on reasonable conditions that to it seem just,

> all remedies that any of the parties may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter so that, as far as possible, all matters in controversy between the parties may be completely and finally determined and all multiplicity of legal proceedings concerning any of those matters may be avoided.

[17] In *Provincial Health Services Authority v. Sayyari*, 2022 BCSC 2092, Elwood J. had occasion to consider the interplay of these provisions in the context of a petition brought by PHSA, seeking to enforce an alleged settlement agreement between itself and a terminated employee, which purported to resolve her pre-existing complaint under the *Code* alleging discrimination based on age.

[18] The respondent in that case, Ms. Sayyari, had refused to sign the alleged settlement agreement when PHSA presented it to her. She had also, since the date of the alleged settlement, commenced an action in this court against PHSA and another one of its employees who had been her manager, advancing an allegation of wrongful dismissal and other claims that appeared to Elwood J. to be within the exclusive jurisdiction of the Tribunal.

[19] Ms. Sayyari opposed the petition on two grounds. First, she argued that this court had no jurisdiction to grant the relief sought, but rather that it should defer to the Tribunal to determine whether a settlement had been reached, and if so, to enforce it. In the alternative, she argued that, if the court determined that it had the requisite jurisdiction to grant the relief sought, it should refuse to do so on the basis that the settlement was unenforceable under ordinary principles of contract law.

[20] In rejecting Ms. Sayyari's submission that this court lacked the requisite jurisdiction to grant the relief sought, Elwood J. stated as follows:

> [31] Ms. Sayyari gives three reasons why this Court should not determine whether a settlement agreement exists:
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> a) deference to the expertise of the Tribunal;
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> b) respect for the confidentiality of the Tribunal's processes; and
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> c) the expense of proceeding in B.C. Supreme Court, particularly for complainants like Ms. Sayyari who lack the resources of the Petitioners.

> [32] These are worthy arguments, but they are all answered, in my view, by the legislative scheme. The fact of the matter is that the legislature has provided the Court with a role by providing a remedy in the event of a breach of the terms of a settlement agreement. Implicit in this role is the authority to decide, in cases where the parties disagree whether they entered into a settlement, whether the parties made an agreement, interpret the agreement, determine whether it was breached, and decide whether it should be enforced.
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> [33] These are issues that are decided on the ordinary principles of contract law and settlement of legal disputes, which are not matters within the specialized expertise of the Tribunal. The fact that the Tribunal has a statutory jurisdiction under s. 27(1)(d)(ii) to determine whether a settlement agreement exists, and to refuse to hear a complaint if it does, cannot deprive the Court of its own jurisdiction under s. 30 of the Code.
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> [34] The Tribunal's jurisdiction under s. 27(1)(d)(ii) is limited to dismissal of a complaint. Section 27(1)(d)(ii) is of no assistance to a party seeking to enforce any other provision of a settlement agreement, including, in this case, a general release of claims. Section 27(1)(d)(ii) is also of no use to a claimant who may seek, for example, to enforce an agreement to pay compensation or costs to settle a complaint.
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> …
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> [40] In a case where dismissal of a complaint is an option to a party in a human rights complaint, but not a complete remedy for a breach of the terms of the alleged settlement agreement, there is no valid reason, in my view, to require that party to first apply to the Tribunal to dismiss the complaint, and then to the Court to enforce the other terms of the settlement agreement that the Tribunal cannot enforce on its own.
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> [41] Having said all of this, I agree with Ms. Sayyari that the Court should exercise its authority under s. 30 with restraint. Consistent with the principle of restraint, the Court should not intervene unless and until there is a breach of the terms of the settlement agreement, and it should not make orders that are not reasonably required to remedy the breach or prevent further breaches.
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> [Emphasis added.]

[21] Justice Elwood added that part of the rationale for the court to exercise its jurisdiction in that case was the inability of the Tribunal to provide an adequate remedy, explaining his reasoning in that regard as follows:

> [44] In my view, an order of the Tribunal dismissing the complaint would not provide the Petitioners with a complete remedy for the asserted breaches of the alleged settlement agreement. In particular, the Tribunal could not enforce the general release that the Petitioners say Ms. Sayyari breached when she commenced the action in B.C. Supreme Court.

[22] In the result, Elwood J. dismissed the petition on the basis that he was unable on the record before him to determine the facts necessary to decide whether summary enforcement of the alleged settlement would be unjust, unreasonable or unfair. Instead, he granted PHSA leave to file a notice of civil claim but added that it would also be open to PHSA, at its option, to seek to have Ms. Sayyari's complaint dismissed summarily by the Tribunal under s. 27 of the *Code*.

[23] Section 27(1)(c) of the *Code* states as follows:

> 27 (1) A member or panel may, at any time after a complaint is filed and with or without a hearing, dismiss all or part of the complaint if that member or panel determines that any of the following apply:
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> …
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> (c) there is no reasonable prospect that the complaint will succeed;
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> …

[24] The Tribunal has in the past relied on that provision to dismiss complaints summarily on the basis of a release: see for example, *Nguyen v. School District No. 52 (Prince Rupert)*, 2004 BCHRT 20 and *McAteer v. Energy Safety Canada*, 2021 BCHRT 32.

IV. Discussion

[25] I begin my analysis with the observation that this case is distinguishable from *Sayyari* in several important respects.

[26] First, unlike Ms. Sayyari, Mr. Briggs does not contest the existence of the court's jurisdiction to grant the relief sought by PHSA if the court determines that it would be appropriate to do so.

[27] Second, this is not a case, like *Sayyari*, in which "dismissal of a complaint is an option to a party in a human rights complaint, but not a complete remedy for a breach of the terms of the alleged settlement agreement". Here, Mr. Briggs has initiated no proceedings against PHSA other than his complaint before the Tribunal, and he has deposed that he has no intention of doing so in the future. An order of

the Tribunal under s. 27(1)(c) in this case would therefore, if granted, provide PHSA with a complete remedy.

[28] Third, the nature of PHSA's objection to the enforceability of the Release is different in this case. At issue in *Sayyari* was whether a settlement agreement had been formed on the terms alleged, in spite of Ms. Sayyari's refusal to sign it. Here, Mr. Briggs, although he acknowledges having signed the Release, raises an equitable objection to its enforcement that is said to flow from the disability that forms the basis of his complaint of discrimination. In these circumstances, the adjudication of that issue is more likely to engage consideration of the principles falling within the core subject matter of the Tribunal's specialised expertise.

[29] The test that the Tribunal would apply if this issue were to come before it in the form of an application under s. 27 of the *Code* was set out by the Tribunal in *Thompson v. Providence Health Care*, 2003 BCHRT 58. There, Tribunal member Lyster, as she then was, described that test as follows:

> [38] While a settlement agreement cannot, in my view, legally deprive the Tribunal of jurisdiction, it may, however, mean that allowing a complaint to proceed would not further the purposes of the Code. There is a strong public policy interest in encouraging parties to resolve their disputes on a voluntary, consensual basis. This public policy would be severely undermined if parties who had entered into a final settlement of their human rights dispute were, absent public policy considerations to the contrary, permitted to come forward and pursue a complaint with the Tribunal.
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> …
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> [41] In *Pritchard*, [*Pritchard v. Ontario (Human Rights Commission) (No. 1)* (1999), 35 C.H.R.R. D/39 (Ont. Ct. (Gen. Div.))] the Ontario Court (General Division) considered whether the Ontario Human Rights Commission (the "Ontario Commission") acted properly in deciding not to deal with a complaint in circumstances where the complainant had earlier accepted severance pay in exchange for signing a release of her employer. The Ontario Commission declined to deal with the complaint on the basis of s. 34(1)(b) of the *Ontario Human Rights Code*, R.S.O. 1990, c. H.19, which provides that "[w]here it appears to the Commission that … the subject-matter of the complaint is trivial, frivolous or made in bad faith … the Commission may, in its discretion, decide not to deal with the complaint." The Court held that the Ontario Commission "should have given consideration to all the relevant facts of this case" in deciding whether a complaint should be allowed to proceed in the face of a settlement agreement: at para. 20.
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> [42] In considering the potentially relevant factors, the Court stated:

> Undoubtedly, in some cases, an employee who has accepted a sum of money in exchange for a release of claims against a former employer, including human right claims, would be acting in bad faith in subsequently turning around and filing a human rights complaint. However, in other cases, the facts may show that the employee misunderstood the significance of the release, or received little or no consideration for it beyond statutory entitlements under employment standards legislation, or was in such serious financial need that she or he felt there was no choice but to accept the package offered. To take the approach that there is bad faith whenever a human rights complaint is brought after signing a release risks ignoring the context in which a particular complainant has signed the release … (at para. 17)

[43] *Pritchard* was decided on the basis of whether the complainant acted in bad faith, which is also a basis upon which this Tribunal is empowered under s. 27(1)(e) of the Code to dismiss a complaint. Despite the different statutory basis for dismissal, the factors mentioned by the Court in that case are ones which may also be relevant to deciding whether it would further the purposes of the Code to allow a complaint to proceed in the face of a settlement agreement.

[44] Another helpful list of potentially relevant factors, albeit one developed in the context of determining whether a release is valid, was provided by the Alberta Court of Queen's Bench in *Chow*, supra [*Chow (Re)* (1999), 37 C.H.R.R. D/442 (Alta. Q.B.)]:

> Some examples of applicable criteria were discussed in many of the decisions referred to me. These (some of which may be determinative in themselves and others which may not be, and several of which are or may be overlapping), … include:
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> 1. The actual language of the release itself as to what is included, explicitly or implicitly.
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> 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.
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> 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 other party consent.
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> 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.
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> 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 on the party executing the release as to their rights under the Act, and, possibly, the knowledge on the party receiving the release that a potential complaint under the Act is contemplated.
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> 7. Other considerations may include lack of capacity, timing of the complaint, mutual mistake, forgery, fraud, etc.
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> As noted above, I do not intend this list to be exhaustive. I include it in an effort only to assist complainants and respondents, and Panels, in future hearings as considerations that may be applicable. (at para. 104) (citations omitted)

[45] In my view, all of the factors listed by the courts in *Pritchard* and *Chow* are potentially relevant to the determination of whether it would not further the purposes of the Code to allow a complaint to proceed in the face of an alleged settlement agreement. There may be others, to be determined by the Tribunal in future cases.

[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. In practice, the evidence relevant to the different stages of the inquiry is likely to overlap substantially.

[30] Applying that test, the Tribunal has refused on a number of occasions to treat a release as a bar justifying summary dismissal of a complaint under s. 27 of the *Code*: see, e.g., *Heilman v. Upper Room Mission*, 2004 BCHRT 66; *Yee v. West Telemarketing Canada*, 2007 BCHRT 112; and *A and B obo Infant A v. School District C (No. 3)*, 2017 BCHRT 217.

[31] On other hand, this case is similar to *Sayyari* in the sense that deciding whether the Release should be enforced will require factual findings that may be challenging to make on a summary application such as this. PHSA alleges that Mr. Briggs simply changed his mind after taking the payments that he was offered in exchange for the Release, having initiated his complaint to the Tribunal less than one month after receiving the last of those payments. On the other hand, although Mr. Briggs does not directly explain in his own affidavit why he behaved as he did in signing the Release and then accepting the payments before initiating his complaint

under the *Code*, he has adduced evidence that casts doubt on the extent of his awareness of the elements of his claim, and of his capacity to appreciate the nature and effect of the document he was signing at the time that he signed it.

[32] In that sense, this case also resembles *Burton v. Bakker*, 2010 BCSC 325. There, Bruce J. refused to enforce a release and dismiss the plaintiff's claim summarily under the *LEA*, but instead remitted the question of the enforceability of the settlement agreement for consideration at the trial, for the following reasons:

> [22] … on an application for a declaration that a settlement agreement is binding on the parties, the court may apply the ordinary principles of contract law to determine the matter and grant or dismiss the application based on these principles.
>
> [23] On the other hand, in an application to enforce a settlement agreement, the court has a broader range of remedies available to it that in an ordinary contract case, particularly because of s. 8 of the *Law and Equity Act*. This provision authorizes the court to grant a stay of proceeding in any cause or matter before it if it is just and fit in all of the circumstances. Alternatively, the court may exercise its discretion to leave the issue of the settlement agreement to the trial judge. As Garson J. (as she then was) says *in Vickaryous v. Vickaryous*, 2001 BCSC 930, 19 R.F.L. (5th) 195 at paras. 28 to 29:
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> > [28] This application is brought pursuant to Rules 1, 2, 18A, 27 and 57 of the Rules of Court and s. 8 of the *Law and Equity Act.*
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> > [29] In an application such as this, the court may grant or dismiss the application to enforce a settlement, pursuant to Rule 18A. Alternatively, pursuant to s. 8 of the *Law and Equity Act* the court may exercise its discretion in favour of granting a stay of the proceedings pending completion of the settlement agreement. The court also has a discretion to leave the settlement issue to be resolved at trial. (*English v. Storey*, [1999] B.C.J. No. 1647 (B.C.S.C.) and *Hawitt v. Campbell* (1983), 148 D.L.R. (3d) 341, 46 B.C.L.R. 260 (C.A.).)
>
> [24] In *Hawitt v. Campell*, (1983) 148 D.L.R. (3d) 341, 46 B.C.L.R. 260 (C.A.) [*Hawitt CA*], the Court of Appeal articulated the circumstances in which the court may refuse a stay of proceedings and held that the same factors should apply whether the application is for a stay of proceedings or for summary trial on the issue. These factors are described by MacFarlane J.A. in *Hawitt CA* at paras. 20 to 23:
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> > [20] The judge may refuse the stay if:
> >
> > 1. there was a limitation on the instructions of the solicitor known to the opposite party;

> 2. there was a misapprehension by the solicitor making the settlement of the instructions of the client or of the facts of a type that would result in injustice or make it unreasonable or unfair to enforce the settlement;
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> 3. there was fraud or collusion;
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> 4. there was an issue to be tried as to whether there was such a limitation, misapprehension, fraud or collusion in relation to the settlement.
>
> [21] Refusal of a stay would leave the parties to their remedy in the action or in an action on the settlement.
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> [22] My fourth point arises from an analogy between a summary application to stay, and an application for summary judgment. In either case, if there is a triable issue then the parties ought to be left to their remedy at trial.
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> [23] In exercising his discretion to refuse to grant a stay, a judge will consider not only whether there was the required misapprehension by the solicitor but whether the result of that would be unreasonable or unfair to the client. It is in that sense that I understand the reference to reasonableness and fairness in the authorities cited.

[25] Finally, in *Robertson* the Court of Appeal clarified that the judgment in *Hawitt CA* deals with an application for a stay of proceedings or summary relief and does not address the legal and equitable principles that ultimately govern whether the settlement is binding on the parties. The latter question is to be determined by the ordinary principles of contract law. As Lambert J.A. says in *Robertson* at 388:

> …But the remarks made in the course of the reasons in *Hawitt v. Campbell* that a stay might be refused if a settlement obtained as a result of a misapprehension was unreasonable or unfair should not be regarded as introducing a rule that settlements are not binding if they are unreasonable or unfair. In my opinion, those remarks were intended to apply to the exercise of the judge's discretion upon a summary application for a stay. A judge hearing such an application might refuse a stay, if there had been a misapprehension of instructions, on the ground that to allow it might be unjust. The result of a refusal would be to leave the parties to seek their remedies in the action, in which the settlement might be pleaded, or to seek them separately in an action on the settlement. In short, *Hawitt v. Campbell* deals with the considerations which apply to the judicial discretion under s. 8 of the Law and Equity Act to grant or refuse a stay. But those same considerations do not determine whether a settlement is binding or not.

[26] Applying these principles to the case at hand, I find it would be inappropriate to grant a stay of proceedings or to grant the summary relief claimed by the defendants. In my view, Mr. Burton has raised a triable issue that there was a unilateral mistake and unfair reliance upon it by the

> defendants. Further, he has raised a triable issue that the offer to settle was made under a misapprehension of the facts underlying the claim such that it would result in an injustice to enforce the settlement. The parties should be left to pursue their remedies in respect of the settlement agreement at the trial of the action set to commence on April 19, 2010.
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> [Emphasis added.]

[33] The authorities cited by Bruce J. make it clear that the inquiry to be undertaken under the *LEA* in deciding whether to enforce a release and grant relief of the kind sought here involves a careful weighing of interests and policy considerations. That inquiry is similar but not necessarily identical to the one that the Tribunal would be called upon to pursue on an application under s. 27 of the *Code*.

[34] Under s. 30 of the *Code*, I can only make an order of the kind that the Tribunal itself could have made. The *ATA* grants the Tribunal the power to make the kind of order sought here "if it is satisfied that the order is consistent with the enactments governing the application." Accordingly, in order to grant the relief sought on this application, I must be satisfied, among other things, that that condition has been met. One of the issues that arises in this case is whether the disability that is the subject of Mr. Briggs' human rights complaint, or its consequences, undermine the fairness of the Release, or otherwise render it unfair for PHSA to rely on it. Unlike the purely contractual question that was before Elwood J. in *Sayyari*, it is an issue that, in my view, the Tribunal is indeed better placed than this court to resolve.

[35] For those reasons, I have concluded that the question of the enforceability of the Release should more properly be left for the Tribunal to decide in the context of the application under s. 27 of the *Code* that is already squarely before it.

[36] It follows that the petition should be dismissed and I so order.

V. Summary and Conclusion

[37] The petition is dismissed, with costs to Mr. Briggs as the successful party.

"Milman J."