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## CASE SUMMARY: SKCA UPHOLDS LABOUR RELATIONS BOARD DECISION THAT COMPLAINANT UNDER THE REPEALED OHS ACT COULD RELEASE AN EMPLOYER WITH RESPECT TO ANY PAST WRONGDOING THAT IS PERSONAL TO THE COMPLAINANT

Appeal from decision of Saskatchewan Labour Relations Board regarding whether a complainant under employment legislation could release an employer with respect to wrongdoing that occurred in the past and is personal to the complainant rather than systemic in nature.

**Administrative law – Decisions reviewed – Labour and employment boards – Appeals; Employment – Termination – Discrimination; Judicial review – Standard of review – Correctness; Settlements – Releases**

[Wieler v. Saskatoon Convalescent Home](#), [2017] S.J. No. 457, 2017 SKCA 90, Saskatchewan Court of Appeal, October 20, 2017, G.R. Jackson, Ryan-Froslic JJ.A. and Y.G.K. Wilkinson J. (ad hoc)

The complainant was an employee of Saskatoon Convalescent Home (the “Employer”). The Employer terminated the complainant’s employment and entered into an agreement with her involving the payment of severance in exchange for a release of all claims arising from the complainant’s termination. The complainant received independent legal advice regarding the agreement and before executing the release.

After executing the release, the complainant filed a discrimination complaint under the *Occupational Health and Safety Act*, 1993, S.S. 1993, c. O-1.1, repealed and replaced by the Saskatchewan *Employment Act*, S.S. 2014, c. S-15.1 (the “Act”). The adjudicator who reviewed the complaint under the Act concluded that because of the release the matter was outside his jurisdiction.

The complainant then exercised a first right of appeal under the Act. On the first appeal, that adjudicator determined there was jurisdiction, but the complaint was barred by the release.

The complainant then exercised a second right of appeal to the Labour Relations Board (“the Board”). On the second appeal, the Board determined the release barred the complaint and additional relief under the Act.

The complainant appealed to the Saskatchewan Court of Appeal. The Court framed the issue on appeal as follows: Whether a complainant under the Act could release an employer with respect to a wrongdoing that occurred in the past and that is personal to the complainant, as opposed to being systemic in nature.

The Court held the issue was not a matter of jurisdiction. The issue was whether the complainant could, as a matter of law, waive her rights under the Act. The adjudicator had jurisdiction to make that assessment.

The Court confirmed employment legislation is for the general benefit of workers and that benefit may not be bargained away; however, once an event occurs which provides an individual with a right to make a complaint under such legislation, the right to pursue that complaint becomes personal to the individual, and the individual may take various steps, including negotiating a resolution. Where a release is given with respect to a personal right under employment legislation, the validity of the release must be reviewed. The Court held an adjudicator under the Act has the authority to review a release to determine if it is valid. A release cannot take away that jurisdiction nor can it preclude an investigation. That jurisdiction is provided for under the Act.

The Court noted a release granted in the face of a systemic workplace issue may not prevent an adjudicator under the Act from following up on an individual's complaint either alone or in connection with other complaints. In certain circumstances, an employee who has raised health and safety concerns, is terminated, and executes a release, may be able to pursue a complaint against an employer. Resolution of that issue will depend on the nature of the complaint and the form of the release.

The Court dismissed the appeal. The Court concluded the Board did not err when it held a complainant could release an employer with respect to past wrongdoing personal to the complainant.

This case was digested by [Joel A. Morris](#), and first posted on Quicklaw and published in the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Joel A. Morris at [jmorris@harpergrey.com](mailto:jmorris@harpergrey.com).