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Public Service Labour Relations and Employment Board Act
and
Public Service Employment Act

Before a panel of the
Public Service
Labour Relations
and Employment Board

BETWEEN

RICHARD LEDUC

Complainant

and

CLERK OF THE PRIVY COUNCIL AND SECRETARY TO CABINET

Respondent

and

OTHER PARTIES

Indexed
Leduc v. Clerk of the Privy Council and Secretary to Cabinet

Complaint of abuse of authority pursuant to section 65(1) of the *Public Service Employment Act*

REASONS FOR DECISION

Decision: The complaint is dismissed due to lack of jurisdiction

Before: Nathalie Daigle, Board Member

For the complainant: Richard Leduc

For the respondent: Martin Desmeules

Case heard in Ottawa, ON
January 7 and February 19, 2015

Introduction

1 On September 10, 2014, the Clerk of the Privy Council and Secretary to the Cabinet (the respondent) raised an objection regarding the jurisdiction of the Public Service Staffing Tribunal (the former Tribunal) to hear this complaint. The respondent stated that following a settlement conference held on May 2, 2014, a valid and binding settlement agreement was signed with the complainant, Richard Leduc. The withdrawal of the complaint was subject to the respondent carrying out certain terms of the agreement. The respondent believes that the obligations under the agreement have been fully discharged.

2 In order to deal with the respondent's objection, while ensuring the confidentiality of the settlement conference process, only the necessary information regarding the settlement conference and agreement is reported in this decision.

3 On November 1, 2014, the *Public Service Labour Relations and Employment Board Act*, S.C. 2013, c. 40, s. 365 came into force and created the Public Service Labour Relations and Employment Board (the PSLREB). This new Board replaces the former Tribunal and the Public Service Labour Relations Board (the former Board) and is responsible for handling complaints filed under the *Public Service Employment Act*, S.C. 2003, c. 22, s. 12 and 13 (the PSEA). Consequently, this decision was issued by the PSLREB.

4 For the following reasons, the PSLREB allows the respondent's objection. The PSLREB concludes that there is a valid and binding agreement between the parties and that the PSLREB does not have jurisdiction to hear this complaint.

Background

5 On October 18, 2013, the complainant filed an abuse of authority complaint with the former Tribunal under section 65(1) of the *Public Service Employment Act* (PSEA) after he was selected for lay-off. The complainant held a senior economist position at the Privy Council Office (PCO) before he was laid off.

6 The complainant alleges in his complaint that the decision to lay him off was discriminatory. Under section 80 of the PSEA, the PSLREB may interpret and apply the

Canadian Human Rights Act (the CHRA) in determining whether the complaint is founded in terms of section 65.

7 The PSLREB determined at the pre-hearing conference, held in advance of the hearing, that only the issue of the objection raised by the respondent would be reviewed at this stage, and that a decision would first be issued on this matter before the substantive issue (whether the lay-off was discriminatory) would be reviewed. The complainant nevertheless presented some evidence at the hearing regarding the revocation of his "Top Secret" security clearance to support his position that the lay-off was discriminatory. However, this evidence was not taken into consideration at this stage of the proceedings, since the hearing was exclusively on whether there is a valid and binding agreement between the parties and, if so, if the conditions of the agreement were respected by the respondent.

Terms of Settlement

8 A settlement conference was held by the former Tribunal on May 2, 2014 in the presence of the Chairperson of the former Tribunal. The purpose of the conference was to give the parties the opportunity to discuss the strengths and weaknesses of their case in an effort to settle the complaint.

9 The parties first signed a *Settlement Conference Terms and Conditions Agreement* on the terms of the settlement conference that sets out the confidentiality of the discussions during the settlement conference. The conference ended with the complaint being settled and a Terms of Settlement agreement (the agreement) was signed. The agreement was signed on May 2, 2014 by the complainant and Monique Lacroix-Labelle, the respondent's representative. Ms. Lacroix-Labelle was the Executive Director, Human Resources Division, PCO.

10 The agreement contains a standard confidentiality clause that specifies that the parties agree not to disclose the content of the settlement conditions except for administrative or legal reasons.

11 On September 15, 2014, the complainant informed the former Tribunal that he was challenging the respondent's position that a valid and binding settlement agreement was signed by the parties. In his opinion, the settlement agreement was conditional on the respondent fulfilling certain obligations and the respondent failed to do so. Alternatively, he alleges that the agreement is null and void for various reasons and that the PSLREB has the authority to rule on the merits of the case. Lastly, as an alternative argument to the previous arguments, the complainant advances that the respondent failed to meet the implicit obligation to act in good faith by fulfilling its contractual obligations.

Preliminary Matter

12 At the beginning of the hearing, the respondent filed a motion asking that the respondent's book of documents, containing the agreement and details for the implementation of the agreement, remain sealed. The respondent's lawyer explained that the terms of the agreement are confidential and should not be known by anyone other than the parties. Clause 10 of the agreement specifically provides for the agreement's confidentiality. The complainant did not oppose the motion.

13 It is important to preserve the confidentiality of the details of the discussions leading to a settlement agreement, the agreement's conditions and implementation. If the parties' submissions for settlement negotiations could be used by third parties in subsequent proceedings, the parties would be less inclined to participate in such discussions. For this reason, the PSLREB orders the sealing of the respondent's book of documents that contains the following documents:

I-1 Terms of Settlement;

I-2 Letter dated May 12, 2014 and its three attachments (I-2-A, I-2-B, I-2-C)

I-2-D Statement of earnings dated May 29, 2014;

I-3 E-mails exchanged by the parties between May 2 and September 9, 2014.

14 Consequently, these documents will not be accessible to the public.

Issue

Does the PSLREB have jurisdiction to hear this complaint following the agreement reached between the parties?

Analysis

15 Section 79 of the PSEA sets out that the PSLREB can provide mediation to settle complaints. A settlement conference is similar to mediation since it gives the parties an opportunity to discuss a possible settlement of the complaint with a PSLREB member.

16 In *MacDonald v. Canada*, 1998 CanLII 8736 (F.C.), the Federal Court found that the settlement, which was reached willingly, constitutes a complete bar to the employee's efforts to have the grievance heard by the former Board (at that time, the Public Service Staff Relations Board).

17 This principle was applied to complaints before the former Tribunal in *Baker v. the Deputy Minister of Public Works and Government Services Canada*, 2013 PSST 11. In *Baker*, the former Tribunal found that when an employee files a staffing complaint and the employee then signs a binding settlement agreement with the agency's or department's deputy head, they are in the same position as those that file a grievance and sign a binding settlement agreement with their employer. In *Baker*, the former Tribunal noted the following in subsection 35 of the decision:

> Similarly to the grievance procedure, the complaint procedure set out in the PSEA is designed to provide complainants and deputy heads with a method for the orderly processing of complaints. The Tribunal's complaint procedure provides the parties with opportunities at various stages to enter into discussions to resolve the complaint. It follows that, if mediation, discussions or a settlement conference lead to a binding agreement, the parties should not be allowed to break the agreement.

18 In *Baker*, therefore, the former Tribunal reached the conclusion that a valid and binding settlement agreement in a complaint constituted a complete bar to the complainant's efforts to have the complaint heard by the Tribunal.

19 The two parties do not dispute that they reached an agreement at the conclusion of the settlement conference on May 2, 2014. The fundamental question is whether this agreement was final and binding or conditional. If the agreement was conditional on the respondent's obligations being fulfilled, and the respondent failed to do so, the complaint remains before the PSLREB. If the agreement was binding, it is binding on the parties and the PSLREB cannot hear the complaint.

20 According to the respondent, the agreement reached during the settlement conference was final and binding as soon as it was signed and the respondent complied with all its terms. The respondent further submits that the PSLREB has jurisdiction on issues of enforcement of settlement conference agreements. According to the respondent, the labour relations adjudication jurisprudence as well as the decisions of the Federal Court in *MacDonald* and the Federal Court of Appeal in *Amos v. Canada (Attorney General),* 2011 FCA 38, support its position. The respondent therefore asks the PSLREB to conclude that the agreement was binding, that it complied with all the terms of the agreement and that the PSLREB, consequently, does not have the jurisdiction to hear the complaint.

21 The PSLREB has reviewed the contents of the agreement. It specifies that the parties accept the Terms of Settlement as a final and definitive settlement of the three following complaints: (1) complaint to PSLREB (previously the former Tribunal); (2) a harassment complaint against the Privy Council Office; and (3) a complaint to the Canadian Human Rights Commission. The complainant commits, in the agreement, to complying with four terms, which are in paragraphs 1 to 4 of the agreement. The respondent commits to complying with three terms; they are in paragraphs 5 to 7 of the agreement.

22 Paragraph 8 of the agreement states that it is subject to a condition. The section reads as follows: [translation]

> 8. This agreement is conditional on the payment [of the amount in paragraph 7 of the agreement] to the complainant. At that time, the complainant will withdraw the complaints stipulated in this agreement. If the amount is not paid as planned, this agreement will be null and void and the complaint to the Public Service Staffing Tribunal will proceed.

23 This paragraph therefore sets out that the agreement will be null and void if the amount in paragraph 7 of the agreement is not paid to the complainant. Paragraph 8 is the only proviso of the agreement. No other clause stipulates that the agreement is conditional on another term being fulfilled.

24 In the present case, it is clear that the respondent paid the complainant the amount stipulated in the agreement minus 1 cent (1¢). According to the evidence presented at the hearing, the respondent offered to pay the full amount negotiated in two installments since the computer pay system did not allow the full amount to be paid in one installment. However, the complainant specifically asked, in his e-mails dated May 9 and 12, 2014, that only one installment be made in order to accelerate the process. In his e-mails, he asked to receive one installment and that it be the negotiated amount minus one cent (1 ¢). He then informed the respondent of the following in his e-mail dated May 12, 2014: [translation] "I accept that one installment in the form of a cheque in the amount of [...] be paid. I agree with this change to item 7 of the Terms of Settlement." The complainant did not allege, at the hearing, that the respondent failed to fulfill this term of the agreement, i.e. the payment of the agreed amount.

25 On May 29, 2014, the respondent therefore paid the complainant the agreed amount, i.e. the amount in paragraph 7 of the agreement minus one cent (1 ¢). The pay stub dated May 29, 2014 showing that the payment was made was presented as evidence.

26 The respondent argues that, despite the wording of paragraph 8, the agreement was not conditional but binding since the agreement did not provide any option for the parties to change their mind or not fulfill their obligations. Specifically, the wording of the agreement did not include any wording that would give the respondent the option to withdraw from the contract, change their mind, not fulfill the obligations or not pay the agreed amount to the complainant.

27 The respondent also emphasized that the Federal Court in *MacDonald*, paragraph 35, stated that the objective test for determining whether an agreement is binding is if the person's words and acts indicate an intention to agree. This approach

was followed in subsequent case law of the former Board and is applicable, according to the respondent, in complaint files before the PSLREB. The respondent argues that the *Van de Mosselaer v. Treasury Board (Department of Transport)*, 2006 PSLRB 59 decision is particularly useful in this analysis. Adjudicator Love noted, in paragraph 46, that it is a binding settlement when there is clarity about the parties, the grievances that were the subject of the settlement, the consideration for the settlement, and the mutual obligations of the parties which required implementation.

28 According to the respondent, all these criteria are met in this case: the parties are clearly identified in the agreement, as well as the complaints that were the subject of the agreement, the consideration for the settlement and the mutual obligations of the parties which required implementation.

29 The PSLREB notes that the fact that the parties signed the agreement on May 2, 2014 shows their intent, at the conclusion of the settlement conference, to settle their dispute through an agreement. Was the agreement, when signed, final and binding or conditional? Originally, it was intended to be binding. The first lines of the agreement specify that the parties accept the agreement as a final and definitive settlement of the three above-mentioned complaints. However, paragraph 8 of the agreement was added at the complainant's request and this paragraph modifies, to some extent, the scope of the agreement. This paragraph specifies that the agreement is null and void if the amount in paragraph 7 of the agreement is not paid to the complainant. However, the payment of this amount to the complainant is not voluntary or optional, since the respondent specifically commits in the agreement to pay this amount to the complainant. The provision found in paragraph 8 of the agreement does not resemble a regular proviso where the agreement negotiated becomes binding after a condition external to the agreement is met. This would be the case in a sales contract for a house that becomes binding, for example, after the proviso for obtaining financing was realized. In this latter case, a third party (non-signatory of the agreement) is involved in meeting the condition.

30 Here, however, the question of whether the agreement was, when signed, final and binding or conditional need not be decided. What is important is that the parties

were bound by it as of May 29, 2014, the date on which the respondent paid the complainant the agreed amount. If the respondent had not paid this amount to the complainant, the complainant could have relied on this to argue that the agreement was null and void. However, since the respondent paid the amount to the complainant, paragraph 8 of the agreement is moot. The Terms of Settlement therefore constitute a binding settlement.

31 The complainant states that even if the PSLREB finds that the agreement is binding, it is null and void since the respondent showed evidence of bad faith before and during the signing and that this justifies its nullification. In other words, he argues that the agreement is flawed since there would have been, in this case, unfairness, undue influence, duress and false representations.

Good faith bargaining requirement

32 The complainant alleges that the agreement is unfair since the PCO did not take into account his legitimate interests before and during its signing. He explained that his harassment complaint against the PCO was pending when the agreement was signed and that the respondent acted in bad faith by not responding in due time to this complaint. He also alleges that the respondent acted in bad faith by failing to provide him with relevant information before the agreement was signed and that it resulted in an unequal balance of power. More specifically, he argues that the respondent took too long to respond to an access to information request that he presented to the PCO in November 2013. In support of his argument, he submitted the results of an investigation led by the Office of the Information Commissioner (OIC) following the complaint he filed against PCO. In its investigation report, the OIC found that the PCO could not demonstrate that its estimated timeframes to respond to his request were entirely reasonable.

33 The complainant argues that, consequently, he was at a disadvantage during the negotiations since he did not receive the documentation that he requested. He submits that the respondent thereby breached section 1375 of the Civil Code of Québec related to the obligation to act in good faith from when the obligation arises to when it is

performed or extinguished. According to him, the parties must, under this section, promote full and frank disclosure of the facts that could change the conditions of the agreement and make available to the other party key information that would help them make an informed decision.

34 The complainant also alleges that he suffered undue influence by the respondent and that it is because of this undue influence and duress that he signed the agreement. He said that he was not accompanied during the settlement conference, and that he was not able to reach his spouse or his lawyer during the day of negotiation in order to obtain their feedback on the offer that was made. He also explained that the loss of his employment was about to drive him into personal bankruptcy. He therefore felt obligated to sign the agreement.

35 Lastly, he alleges that the respondent knowingly made false or misleading representations regarding one of the terms of the agreement. For this reason, he claims that his consent was not free and informed. A false or misleading representation is an inaccurate statement regarding an important fact made to unfairly induce the other party to sign the contract.

36 In support of his argument that the respondent made false or misleading representations, the complainant explained that he was misled regarding the term of the agreement that states that the respondent would provide him with two letters of recommendation, one from Ms. Lacroix-Labelle and the other from Stephen Burt, Acting Assistant Secretary to the Cabinet. This is the commitment made by the respondent in paragraph 5 of the agreement.

37 At the hearing, the complainant explained that he requested these two letters of recommendation for use in his job search after he was laid off. He maintains that the respondent intentionally hindered his job search when his former supervisor at PCO, who was contacted by a potential employer for a reference, gave him a negative reference.

38 In other words, the complainant submits that the respondent intentionally misled him by committing to giving him two positive letters of recommendation because this led him to believe that all references he would receive from PCO would be positive. If the complainant had suspected that his former supervisor would give him a negative reference in a reference check, he explained, he never would have signed the agreement.

39 The respondent denies all the allegations of unfairness, undue influence, duress or false representations. It maintains that the agreement was signed in good faith and that the transaction was not unreasonable or unconscionable based on the case law. The respondent relied on a passage of the *Van de Mosselaer* decision to support its position. In this decision, Adjudicator Love noted that despite the fact that a memorandum of agreement binds the parties, the PSLREB still has the discretion to decide that an agreement ought not to be enforced as an unconscionable transaction. However, the standard is a very high one. Adjudicator Love noted the following in paragraph 42 of the decision:

> … [the former Board] has a residual discretion to determine that the settlement agreement ought not to be enforced as an unconscionable transaction. The standard is a very high one and was the subject of comment in MacDonald (supra). At paragraph 27, this case referred to Stephenson v. Hilti (Can.) Ltd. (1989), 29 C.C.E.L. 80 (N.S.S.C.T.D.), which summarized the test for an unconscionable transaction:
>
> > […]
> >
> > A transaction may be set as aside as being unconscionable if the evidence shows the following:
> >
> > 1) That there is an inequality of bargaining position arising out of ignorance, need or distress of the weaker party;
> >
> > 2) The stronger party has unconscientiously used a position of power to achieve an advantage; and
> >
> > 3) The agreement reached is substantially unfair to the weaker party or, as expressed in the Harry v. Kreutziger case, it is sufficiently divergent from community standards of commercial morality that it should be set aside.

40 The PSLREB also notes that the British Columbia Court of Appeal, in *Harry v. Kreutziger*, 1978 CanLII 393, (1978), 95 DLR (3d) 231 (BC CA), examined in detail the question of unconscionable transactions. Justice Lambert noted, at p. 241, that an

unconscionable transaction is, in summary, a transaction that is so unconscionable that it requires the Court's intervention in light of all the circumstances surrounding the signing of the agreement.

41 For the reasons that follow, the PSLREB cannot conclude that the transaction was unconscionable. As noted in *Stephensen*, the first criterion to apply regarding an unconscionable transaction is proof of inequality of position of the parties arising out of ignorance, need or distress of the weaker. Here, first of all, the simple statement by the complainant that he was ignorant of the issue negotiated in the agreement does not constitute sufficient proof to conclude that there was inequality of the positions of the parties arising out of his ignorance. According to the evidence on file, the complainant held a fairly senior position in the government before he was laid off. He also proved himself to be very erudite, knowledgeable and cultured at the hearing.

42 Next, although the complainant stated that he no longer received his salary as an economist and the loss of his job was about to drive him into personal bankruptcy, he did not present evidence to support his statements. His testimony alone is not sufficient to lead to the conclusion that he was going through a real period of economic distress.

43 In addition, according to the uncontradicted testimony of Ms. Lacroix-Labelle, the complainant did not bring to her attention or to the attention of the other people present at the settlement conference that he felt forced to sign the agreement that day, May 2, 2014, or that he was feeling distressed.

44 According to the evidence presented by the respondent, the parties initially met for a first settlement conference on April 17, 2014. Ms. Lacroix-Labelle and Mr. Burt represented the respondent on that date. The complainant did not have a representative. Progress was made in negotiations in the morning, but since Ms. Lacroix-Labelle and Mr. Burt did not have the mandate to sign an agreement involving financial considerations, the settlement conference was called to a halt around noon.

45 Ms. Lacroix-Labelle was, however, given a new mandate to negotiate by the respondent and she therefore requested that a new settlement conference be held. At

this second settlement conference, which was scheduled for May 2, 2014, the complainant was still unaccompanied, but he stated that he had access to a lawyer. According to Ms. Lacroix-Labelle, there was a good atmosphere at the conference, which enabled the parties to freely discuss the issues in question.

46 In particular, Ms. Lacroix-Labelle explained that the parties first reached an agreement in principle at the end of the morning of May 2, 2014. The complaint then stated that he had to consult his spouse and his lawyer before concluding the matter. For this reason, he left the conference room around noon. He explained at the hearing that he was ultimately not able to reach either his spouse or his lawyer during the course of the day. However, he did not inform the other party of this. The negotiations therefore continued and the parties arrived at a definitive agreement in the late afternoon. The two parties signed the agreement there around 4:45 p.m. and shook hands, wishing each other good luck.

47 Thus, there is no conclusive evidence that the complainant felt forced to sign the agreement that day or that he was feeling distressed.

48 For all these reasons, the PSLREB concludes that the evidence is insufficient to establish that there was an inequality of negotiation positions between the respondent and the complainant arising out of ignorance, need or distress of the complainant.

49 This brings us to the second criterion to apply regarding an unconscionable transaction, namely that the respondent unconscientiously used a position of power to obtain an advantage.

50 The PSLREB does not share the complainant’s opinion that the respondent unconscientiously used its position of power to incite the complainant to sign an agreement to avoid having his complaints heard. First, the PSLREB can find no evidence submitted by the complainant to support his allegation that the respondent unconscientiously used its position to hide key information that would have changed the conditions of the agreement if it had been known. It is true that the access to information request submitted by the complainant to PCO on November 25, 2013 was still being processed at the time of the settlement conference in May. However, there is no

probative evidence supporting the claimant's argument that the respondent delayed sending him the information in order to hide certain facts to induce him to sign an agreement. The report produced by the OIC indicates that the complainant's request generated a large number of documents, 1,310 pages, and that PCO sent him a final response on September 4, 2014.

51 The complainant relied on a document he received from PCO, an organization chart, to support his position that the respondent hid the fact that at the time parties signed the agreement, one economist position still fell under the PCO Intelligence Assessment Secretariat (IAS). He maintains that he had been informed, when he was laid off, that the IAS team no longer included economists. He explained that he would not have signed the agreement if he had known that this economist position had not been eliminated.

52 However, Mr. Burt clarified this question at the hearing. He explained that the complainant was not misled at the time of his lay-off regarding economist positions at IAS. He confirmed that IAS no longer employs economists in its team because it now uses experts from other departments when it needs specific data. He also explained that the reason the version of the organization chart obtained by the complainant indicated "EC-05" in one place is because this was the original classification of a person seconded to PCO to work on policy issues. According to Mr. Burt, the respondent never misled the complainant regarding economist positions at IAS. The PSLREB accepts Mr. Burt's testimony that the complainant was not misled on this subject.

53 The complainant also relied on an e-mail written on July 23, 2014 from a potential employer to support his position that the respondent hid key information that would have changed the conditions of the agreement if they had been known. This e-mail contains a report from the potential employer of the comments made by the complainant's former supervisor, Michael Kaduck, Director, Europe Division, PCO, about him during a reference check. However, PCO did not have a copy of this e-mail, which was also written after the agreement was signed. It is therefore clear that the respondent did not hide this document from the complainant at the time the agreement was signed.

54 However, the complainant states that this e-mail demonstrates that the respondent intended to mislead him regarding the letters of recommendation. He points out that he would not have signed the agreement in May 2014 if he had known that two months later his former supervisor would give him a negative reference. He maintains that by committing to providing him with two letters of recommendation, the respondent also committed to providing positive references in any eventual reference checks.

55 However, there is a difference between, on the one hand, providing letters of recommendation to an employee and, on the other hand, responding to the questions asked by a potential employer during a reference check. The agreement does not raise the question of references that the complainant's former supervisor at PCO may be called upon to provide if contacted. In other words, the respondent did not commit in the agreement to providing the complainant's future employers only with positive references. The respondent rather committed to providing the complainant with two letters of recommendation prepared by the two persons previously identified by the parties, and it fulfilled its obligation by providing these two letters to the complainant.

56 Therefore, nothing enables the conclusion that the respondent unconscientiously used a position to obtain an advantage.

57 This leads us to the third criterion for an unconscionable transaction: whether the agreement reached is substantially unfair to the complainant or sufficiently divergent from community standards of commercial morality that it should be set aside. In other words, as mentioned in *Harry,* was the transaction so unconscionable that it requires the Court's intervention in light of all the circumstances surrounding the signing of the agreement?

58 The PSLREB believes that the answer to this question is no. No probative evidence supports this allegation that the agreement is substantially unfair or divergent from community standards.

59 First of all, the PSLREB notes that no evidence was submitted by the complainant regarding what would constitute fair compensation, as opposed to unfair compensation, in the case at hand. Consequently, nothing enables the PSLREB to

conclude that the compensation awarded to the complainant was unfair. In fact the PSLREB believes that the agreement was not unfavourable to the complainant with regard to the various benefits it provided to him. The PSLREB therefore considers that the complainant has not established that the settlement was substantially unfair to him.

60 According to the complainant, the agreement is also unlawful or immoral because it states that the complainant, in signing the agreement, forgoes [translation] "any current or future proceeding, recourse, appeal, grievance or complaint before any Court or organization whatsoever against Her Majesty in right of Canada … regarding the circumstances surrounding the complaints that are the subject of this settlement."

61 Under this condition, which he considers unlawful or immoral, the complainant forgoes any means of recourse regarding the issues that were the subject of the settlement. This was a way for the respondent to ensure that the binding settlement would not be subject to any future judgement by a court or tribunal. The complainant did not submit any evidence demonstrating that his clause was unfair or abusive.

62 According to the respondent, this is a standard clause that protects the binding nature of the agreement. In *Baker,* in paragraph 36, the former Tribunal in fact noted that "[t]he finality of an agreement is very important to the parties."

63 The PSLREB therefore concludes that it has not been demonstrated that the agreement is divergent from community standards or that the transaction in question is "so unconscionable that it requires the Court's intervention."

64 For all these reasons, the PSLREB rejects the complainant's argument that the respondent used dishonest methods, like undue influence, duress, false representations or another kind of inappropriate behaviour to obtain his consent to the agreement. Rather, the evidence shows that a legitimate agreement was in fact signed in May 2014, but the complainant arrived at the conclusion, a little over two months later, when he learned of the reference given by Mr. Kaduck, that the agreement did not fully meet his needs.

Duty of good faith

65 Alternatively, the complainant asserts that the respondent violated the agreement because it did not respect the implicit condition to act in good faith set out by the Supreme Court decision in *Bhasin v. Hrynew*, 2014 CSC 71. In this decision, the Supreme Court ruled that a contract entails a duty of honest performance.

66 Relying on this case law, the complainant advances that the respondent violated the implicit duty of good faith. According to him, his former supervisor, Mr. Kaduck, was bound by the terms of the agreement even if he was not a signatory to the agreement, and he did not have the right to give him a negative reference. In other words, he believes that he had a legitimate contractual expectation to receive only good references from his former employer.

67 The respondent denies the allegation that it failed in its duty to fulfill the contractual obligations in good faith. It claims that it fulfilled its contractual obligations honestly and reasonably.

68 The evidence demonstrates that once the agreement was signed, Ms. Lacroix-Labelle immediately took measures to implement it. At the hearing, she gave details of the measures she took with different stakeholders and provided a series of e-mails to support her statements.

69 As mentioned above, the PSLREB does not subscribe to the complainant's argument that he had a legitimate contractual expectation to receive only positive references from his former employer. His former supervisor, Mr. Kaduck, was not a signatory to the agreement and was not aware of the conditions of the agreement since it was confidential. Furthermore, Mr. Kaduck only provided a reference for the complainant at his request because the complainant gave Mr. Kaduck's name as a reference to a potential employer. Mr. Kaduck had not been warned, however, that he would be contacted as a reference, because the complainant did not inform him that he had provided his name for a reference check. Mr. Kaduck nevertheless provided the requested reference. Lastly, the question of references given in a reference check was not part of the terms and conditions negotiated by the parties. As mentioned above, it is

a separate issue from the question of letters of recommendations, which was part of the terms negotiated in the agreement.

70 At the hearing, Mr. Kaduck explained that he was contacted by a potential employer who asked him questions about the complainant's past performance. He answered these questions frankly, giving examples of his behaviour at work. In doing this, he described the complainant's strengths and weaknesses at work. The PSLREB believes that Mr. Kaduck acted appropriately because his role as a reference was to answer the questions frankly and honestly.

71 The PSLREB therefore concludes that the respondent did not act in bad faith in carrying out its contractual obligations and in no way violated the agreement.

Conclusion

72 The PSLREB concludes that a binding agreement ties the two parties and that the respondent has complied with all the terms of the agreement. Specifically, the evidence establishes that the respondent has fulfilled its commitment set out in paragraph 5 of the agreement regarding the letters of recommendation. The evidence also demonstrates that the respondent granted the complainant the benefit set out in paragraph 6 of the agreement and paid the complainant the amount agreed upon on paragraph 7 of the agreement. Consequently, the PSLREB does not have jurisdiction to hear this complaint.

Decision

73 The PSLREB upholds the respondent's objection. The valid and binding agreement between the parties prohibits holding a hearing regarding this complaint. These proceedings are therefore terminated and the file closed.

Nathalie Daigle
Board Member