

## Legal update

### Interpreting broadly worded releases: clarification from the Court of Appeal for Ontario

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#### June 2017 Litigation

The Court of Appeal for Ontario recently released its decision in [Biancaniello v. DMCT LLP, 2017 ONCA 386](#) (*Biancaniello*), offering important clarification regarding how Ontario's courts will interpret the scope of releases. In *Biancaniello*, it was held a broadly worded release foreclosed a subsequent claim that was both unanticipated and unknown to the parties when executing the release. In coming to this conclusion, the court confirmed that courts should give effect to language that is "clear and unambiguous in its intent and effect" when interpreting the breadth of a release.

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#### The facts

The appellant, DMCT LLP, provided accounting services to the respondent, Prinova Technologies. Over the course of providing these services, DMCT billed Prinova \$66,632.45 for services rendered between 2006 and 2007. Prinova was unhappy with the value provided by DMCT, alleging DMCT had both overcharged for its services and worked against the best interests of Prinova. When Prinova refused to pay, DMCT commenced litigation to recover unpaid fees. The parties quickly reached an agreement to settle the claim for a total payment of \$35,000. The settlement included a mutual release in which the parties released one another from all claims existing up to the time of the release "arising from any and all services provided by DMCT to Prinova through to and including December 31, 2007" (the Release).

In late 2011, Prinova discovered (and DMCT admitted) that DMCT had failed to comply with certain provisions of the *Income Tax Act* during the course of structuring a transaction for Prinova, exposing Prinova to potential income tax liability of \$1.24 million. Prinova incurred expenses of approximately \$250,000 to rescind the transaction.

In *Biancaniello*, Prinova sought to set aside the Release and recover damages for negligence, breach of contract, misrepresentation and breach of fiduciary duty in the amount of \$3 million. DMCT moved for summary judgment to dismiss the action on the basis that Prinova's claim was barred by the Release.

#### Lower court rulings

The motion judge found that the Release did not foreclose Prinova's claim, holding that Prinova's negligence claim was an "unrelated matter that arose ... years subsequently and was not contemplated by the parties," and that the Release was not intended to bar such an action.

DMCT obtained leave to appeal to the Divisional Court, where the motion judge's decision was upheld on the basis that when Prinova signed the release, it did not know DMCT's advice had been negligently given, and therefore did not know it had a claim against DMCT.

## The Court of Appeal's reasons

The Court of Appeal overturned the Divisional Court's decision, holding that Prinova's claim was in fact barred by the Release.

Justice Feldman, writing for a unanimous panel, began her analysis by affirming a seminal principle from House of Lords' decision in *London and South Western Railway v Blackmore*, (1870) LR 4 HL 610: "The general words in a release are limited always to that thing or those things which were specially in the contemplation of the parties at the time the release was given."

Following a comprehensive review of subsequent case law, Justice Feldman distilled five principles to aid courts in determining what was "in the contemplation" of parties upon signing a release:

- One first looks to the language of the release to find meaning.
- Parties may use language that releases every claim that may arise, including unknown claims. However, courts will require clear language to infer that a party intended to release a claim of which it was unaware.
- General language in a release will be limited to the thing or things that were specially in the contemplation of the parties when the release was given.
- When a release is given as part of the settlement of a claim, the parties want to wipe the slate clean between them.
- One can look to the circumstances surrounding the giving of a release to determine what was specially in the contemplation of the parties.

Applying these principles to the facts before the court, Justice Feldman was satisfied that the Release applied so as to bar Prinova's action in negligence. While the Release did not purport to release *all* possible claims that may exist between the parties, it clearly specified the precise extent of the claims released, both in terms of time frame and subject matter. Specifically, the Release limited the released claims to "those that existed up to [the present time], arising from all of the services provided by [DMCT] through to and including December 31, 2007." The court held that this language clearly included claims that may not have been known to the parties upon the execution of the Release.

Notably, the court rejected the argument that a release must specify whether unknown claims are included in its scope. Rather, as long as the language used is fully understandable, "more words would not assist. ... [T]he solution does not lie with more verbiage." Had the Release used language specifying that it applied to both known and unknown claims, this would simply have been another way of saying it applied to all claims.

## Takeaways

As always, parties executing releases should carefully consider precisely which claims are being released. As the decision in *Biancaniello* demonstrates, releases incorporating broad language may foreclose unforeseen future claims, and thereby prevent a party from recovering losses that may be incurred at a later date. Parties should be aware of this risk when negotiating and executing releases.

Ultimately, however, the thrust of the Court of Appeal's decision is that the plain and unambiguous words of a release will govern the courts' interpretive exercise. Provided that a release is clear and fully understandable, parties should take comfort that Ontario courts will give effect to the terms agreed to, and not unduly extend, restrict or otherwise modify the terms of a release.

Linda Fuerst  
Alan B. Merskey

For further information, please contact one of the following lawyers:

> <b>Matthew J. Halpin</b>	Ottawa	+1 613.780.8654	<a href="mailto:matthew.halpin@nortonrosefulbright.com">matthew.halpin@nortonrosefulbright.com</a>
> <b>Linda Fuerst</b>	Toronto	+1 416.216.2951	<a href="mailto:linda.fuerst@nortonrosefulbright.com">linda.fuerst@nortonrosefulbright.com</a>
> <b>Alan B. Merskey</b>	Toronto	+1 416.216.4805	<a href="mailto:alan.merskey@nortonrosefulbright.com">alan.merskey@nortonrosefulbright.com</a>

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