

Court of King's Bench of Alberta

Citation: Stephen M.K. Hope Professional Corporation v Walsh, 2026 ABKB 597

Date: 20260827

Docket: 2201 04563

Registry: Calgary

Between:

Stephen M.K. Hope Professional Corporation

Applicant

- and -

**Delorie Diane Walsh, Mobil Oil Canada also known as ExxonMobil Canada Ltd,
Donald Harvey Walsh and Shirish P. Chotalia**

Respondents

**Reasons for Decision
of the
Honourable Justice D.A. Labrenz**

I. Introduction

[1] Before the Court are three competing applications, two of which are intended to bring an end to the long and protracted matter.

[2] The Applicant, Stephen M.K. Hope Professional Corporation (“Hope PC”) seeks an Order to enforce a settlement agreement that it states was reached in 2023. The Respondent Donald Harvey Walsh agrees with Hope PC’s position and supports the application.

[3] The Respondent, Delorie Diane Walsh, argues that no settlement was reached. As discussed below, she applied in 2024 to have this matter set down for a special application and to obtain an accounting and review of certain bills of costs. On March 24, 2026, I issued an order that, amongst other things, adjourned that application *sine die*.

[4] The Respondent, ExxonMobil Canada Ltd. (“Mobil”) brought a cross application seeking a declaration that Ms. Walsh’s original award is now statute-barred and unenforceable. If so, Mobil would be immune from any remaining liability to her.

[5] Accordingly, this Court must address a series of potentially dispositive questions. The answers, may or may not, finally resolve all matters.

II. Background

A. Initial Background and Complaint

[6] Ms. Walsh is a former employee of Mobil and its predecessors. On August 14, 1991, she filed a human rights complaint alleging discrimination in employment practices based on gender. The complaint was dismissed on February 16, 1995, and she sought review of that dismissal on March 18, 1995.

[7] On August 15, 1995, Ms. Walsh filed a second human rights complaint, alleging that Mobil had terminated her employment in retaliation for the first complaint. This second complaint was dismissed on June 13, 1996, and Ms. Walsh sought review of that dismissal on July 13, 1996.

[8] On September 21, 1998, the Alberta Human Rights Commission (the “Commission”) appointed a panel to consider the complaints. On January 14, 2002, the panel dismissed the first complaint on the basis that delay had denied due process.

[9] Ms. Walsh appealed that decision to this Court. On September 22, 2004, the Court concluded that although the delay was inordinate, Mobil had not suffered prejudice. The Court ordered that the first complaint be heard by a new panel.

B. Human Rights Decision

[10] On December 16, 2005, the new panel upheld part of the first complaint but dismissed the second complaint alleging retaliation. Ms. Walsh appealed. On May 11, 2007, this Court allowed the appeal and remitted the matter to the panel to assess Ms. Walsh's entitlement to a remedy.

[11] On October 4, 2007, this Court rendered its decision on costs.

[12] Mobil appealed both the liability and costs decisions. On August 5, 2008, the Court of Appeal upheld the liability decision but reduced the costs award to party and party costs. The matter was remitted to the Commission for a hearing on remedy.

[13] On September 2, 2010, a tribunal of the Commission rendered its decision granting Ms. Walsh an award of \$656,920.00 (the "Remedy Decision"). On February 8, 2011, the tribunal issued a decision on costs and interest relating to the Remedy Decision (the "Costs Decision").

C. Subsequent Events

[14] Both Ms. Walsh and Mobil appealed the Remedy Decision. Ms. Walsh also appealed the Costs Decision. On August 22, 2012, this Court upheld both decisions, subject to one minor exception. The Court of Appeal dismissed the parties' appeals on July 4, 2013.

[15] Ms. Walsh subsequently sued her former lawyers, Hope PC and Shirish P. Chotalia KC. On July 10, 2014, Justice Acton granted an order giving Hope PC and Ms. Chotalia a first charge on the choses in action arising from this matter and directing Mobil to pay into Court certain amounts owing for legal fees. The order was renewed on July 8, 2024.

[16] On October 27, 2020, Master Farrington (as he then was) ordered Mobil to pay \$343,021.37 into Court in respect of legal fees owed by Ms. Walsh to Hope PC and Ms. Chotalia.

[17] Ms. Walsh and Mr. Walsh separated in 2018 and divorced in 2024. On April 14, 2022, Mr. Walsh applied for an order directing that all funds payable by Mobil to Ms. Walsh, after payment of legal fees, be paid into Court pending resolution of the matrimonial property proceedings.

[18] On July 11, 2022, Justice Bensler ordered that any amounts payable by Mobil to Ms. Walsh be paid into Court. She further ordered the parties to attempt to resolve the net amount owing and, failing agreement, to return to Court for a one day special chambers application to determine that amount.

[19] On August 9, 2022, Ms. Walsh appealed the Bensler Order. On October 6, 2022, she applied for a stay pending appeal.

[20] The appeal of the Bensler Order was set to be heard on November 15, 2022, but did not proceed. Instead, Justice Kirker of the Court of Appeal invited the parties to participate in a non-binding judicial dispute resolution process.

D. Court of Appeal Judicial Dispute Resolution

[21] Ms. Walsh, Mr. Walsh, Ms. Chotalia, Hope PC and Mobil participated in a judicial dispute resolution process before Justice Kirker on February 3 and June 2, 2023 (the "JDR").

[22] On June 2, 2023, Ms. Walsh and Mobil entered into a standstill agreement in which they agreed to suspend the passage of time in respect of any limitation period under the *Limitations Act*, RSA 2000, c L-12 from June 2 to July 31, 2023. Mobil notes that the agreement expressly excluded limitation periods that had already expired before those dates.

[23] Both Mr. Walsh and Vanessa Hope on behalf of Hope PC state in their affidavits that the parties left the second day of the JDR with the understanding that a settlement had been reached and that only the settlement documentation remained to be completed with Justice Kirker's assistance.

[24] Justice Kirker prepared a draft Consent Order that was circulated to the parties on or about August 3, 2023. Extensive correspondence followed. On August 16, 2023, Ms. Chotalia, on behalf of herself and Hope PC, emailed the parties requesting a meeting with Justice Kirker to clarify issues relating to the settlement documents. In that email, she stated: "It is our understanding that an agreement has been reached". Mr. Walsh adopts that position in his affidavit. On October 25, 2023, Justice Kirker emailed the parties with proposed dates for meeting with her.

[25] On November 17, 2023, Ms. Walsh filed a Discontinuance of Appeal. By letter dated November 20, 2023, Justice Kirker advised the parties that she could no longer assist.

E. Subsequent History

[26] As noted above, on August 13, 2024, Ms. Walsh filed an application seeking to set this matter down for a special application and for various proceedings with respect to costs. On August 27, 2024, Justice Hall of this Court ordered the parties to attend a two-day special application. He also set down several deadlines for the filing of documents. On November 7, 2024, Mobil filed its current cross application. On August 5, 2025, Hope PC filed its current application.

III. Applications

[27] As noted above, for present consideration is Hope PC's application, Ms. Walsh's application and Mobil's cross application. Ms. Walsh's application has been adjourned *sine die*.

[28] In its brief filed March 9, 2026, Mobil proposed that its cross application be heard first. However, during oral submissions on March 24, 2026, counsel for Mobil acknowledged that "if there was a settlement, it would seem that the limitation argument is redundant". I agree. Accordingly, I will first address the alleged JDR settlement and then Mobil's limitations argument.

IV. Preliminary Issues

A. Evidence

[29] On March 24, 2026, I ordered Ms. Walsh to file and serve any affidavit upon which she intended to rely in response to Hope PC's application or Mobil's cross application no later than June 5, 2026. She did not do so.

[30] On June 30, 2026, the day responses to her affidavit were due, Ms. Walsh provided an unfiled affidavit. She asserted that a medical condition had prevented her from preparing and filing the affidavit on time and provided correspondence from some of her physicians.

[31] I concluded that Ms. Walsh's evidence was insufficient to establish that she was unable to prepare and file her affidavit by the deadline. Accordingly, I dismissed her application for leave to file the affidavit late.

[32] Nevertheless, when preparing these Reasons, I reviewed the unfiled affidavit. Portions of it recount background facts that are well known to the parties. Most of the attached exhibits consist of documents and correspondence already before the Court as exhibits to Mobil's affidavit. Other portions contain Ms. Walsh's opinions and conclusions, most of which are not relevant to the issues before me.

[33] With respect to whether the JDR resulted in a settlement agreement, the affidavit refers to Ms. Walsh's July 21, 2023, email to Justice Kirker, in which she advised that there were matters in the agreement to which she did not agree. That email was already in evidence. Ms. Walsh also states that the Consent Order prepared by Justice Kirker "did not address what I had required" and that "J. Kirker knew what my concerns were". However, she does not identify any specific term or issue that allegedly remained unresolved.

[34] I mention these matters only because, even had I granted leave to file the affidavit after the deadline, it would not have affected the conclusions that follow.

B. Letter from Associate Chief Justice Nixon

[35] In the proceedings before me, Ms. Walsh relied upon correspondence from Associate Chief Justice Nison in support of her position that there was no settlement agreement arising out of the JDR and that Hope PC's was not properly before the Court.

[36] On April 19, 2024, counsel for Mobil wrote to ACJ Nixon seeking assistance in enforcing the result of the JDR. In his return letter on April 25, 2024, ACJ Nixon stated that the enforcement of the JDR was not properly before the Court of King's Bench and that an unsuccessful negotiated settlement could not be enforced using this Court's processes.

[37] ACJ Nixon's statements, however, were premised on his understanding at that time that the JDR "was not completed". That is the very issue that is presently before me. At the time of this correspondence, ACJ Nixon did not have the benefit of a full record or of the parties' arguments in respect of the JDR.

[38] In her oral submissions, counsel for Hope PC stated this:

I expect that Ms. Walsh might try to rely on Justice Nixon's letter to say that a determination of my application has already been made. Respectfully, that was not a full and final determination with the benefit of the record that you now have before you. And I submit that you should consider my application with all of the evidence that you now have before you from all of the parties in terms of finding that a settlement was indeed reached in 2023.

[39] I agree. In my view ACJ Nixon did not decide that the JDR was not successful. Rather, he was under the impression that was the case and, based on that impression, concluded that this Court could not assist with enforcement of an incomplete settlement. This matter has now evolved to the point where that question is squarely before me, and I do not believe that I am constrained by ACJ Nixon's letter.

C. Collateral Attack

[40] In addition, during the proceedings, Ms. Walsh argued, essentially, that Hope PC's application constitutes a collateral attack on the Bensler Order. Notwithstanding that it was Ms. Walsh who appealed the Bensler Order, she now says "I believe that using the Bensler Order is the correct option... Use the Order to determine the amount payable to me..."

[41] Ms. Walsh cited case law for the proposition that a court order, made by a court having jurisdiction to make it, stands and is binding unless set aside on appeal or lawfully quashed.

[42] That is certainly true, but it is also true that it is open to parties to litigation to negotiate a settlement that differs from an existing court order. As I indicated to Ms. Walsh during the proceedings, the other parties to this matter do not suggest that the Bensler Order was not properly made. Rather, their position is that it has been rendered redundant by subsequent events, specifically the settlement arising out of the JDR. This does not constitute a collateral attack.

[43] In my view, the continued effect of the Bensler Order, if any, depends upon my conclusions as to the outcome of the JDR.

V. Analysis

A. JDR Settlement

[44] Ms. Walsh maintains that the JDR was unsuccessful and did not result in a settlement agreement. All other parties take the opposite position. They submit that the JDR produced a complete settlement agreement and that only minor matters remained to be formalized.

[45] Mobil filed an Affidavit dated August 21, 2024, from Theresa Boomer, a legal assistant in its counsel's office. The affidavit exhibits numerous documents, including extensive correspondence exchanged among the parties following the JDR. That correspondence makes clear that all JDR participants other than Ms. Walsh believed a settlement agreement had been reached.

[46] For example, Mobil's counsel emailed the parties attaching the "next version" of the settlement documents and noting that the finalized execution documents would require further review and approval by Mobil.

[47] More significantly, the correspondence includes an email sent by Justice Kirker on July 21, 2023, in which she stated, amongst other things:

Thank you, Ms. Young, for copying my assistant with your email yesterday providing copies of the revised settlement documents prepared after our last meeting on June 2.

During our JDR sessions all parties expressed to me an interest in seeing these matters finalized. Everyone worked hard to reach agreement on substantive terms. I commend all of you for that. What remains is to document the agreement. I appreciate this can be difficult and I thank Ms. Young for the heavy lifting she has done in preparing the drafts. That said, I am concerned that the draft settlement documents are too complicated and are not going to be finalized before applicable limitation periods for renewing judgments or otherwise begin to run again forcing further, unnecessary litigation. That is not in anyone's best interests.

I have prepared the attached Consent Order to bring matters to a close. I believe it captures everything that was agreed to. Schedule A to the draft settlement agreement prepared by Ms. Young (also attached) will form part of the Consent Order.

...

I trust we can now conclude these matters.

[48] By contrast, Ms. Walsh provides no substantive basis for her position that no settlement was reached. She identifies no specific issue that remained unresolved. Indeed, some of her correspondence suggests that she initially believed an agreement had been reached. On June 28, 2023, Ms. Walsh emailed Mobil's counsel asking when she could "expect to receive the revised draft documents". On June 30, 2023, after receiving a draft standstill agreement, she responded:

Will you please let me know when I will receive the draft documents from Mobil as previously requested.

...

It has been close to a month since we met. I again offer to draft the documents if Mobil does not have the time. I have already missed opportunity [sic] to have draft documents reviewed. Please let me know Mobil's plans for moving forward on this.

[49] On July 21, 2023, Ms. Walsh replied to Justice Kirker's email, stating:

I have not gone through everything but can advise there are some things that I did not agree to as well as recent developments that have come to light.

[50] This appears to be the first indication that Ms. Walsh did not consider the matter settled. On August 14, 2023, she emailed Mobil's counsel stating:

Further to your recent emails and realizing we are not going to successfully conclude the JDR, I am suggesting that we utilize the Order of Justice Bensler filed July 22, 2022, para [3] to get this matter dealt with.

On the same day, she wrote to Justice Kirker:

...it appears unlikely [sic] Mobil and I will not successfully conclude the JDR, and I have requested that Mobil and I utilize the Order of Justice Bensler para [3] to conclude this matter.

At the time of this correspondence, Ms. Walsh's appeal of Justice Bensler's order remained extant.

[51] A settlement agreement is a contract. As the Court of Appeal noted in *Radhakrishnan v University of Calgary Faculty Assn (cob TUCFA)*, 2002 ABCA 182 at para 30, the recognized grounds for setting aside a settlement agreement are the same as those applicable to any contract. These include fraud, misrepresentation, undue influence, duress, economic coercion, and similar doctrines.

[52] In *Green v Khattab*, 2018 ABQB 523, aff'd 2019 ABCA 287, Justice Macklin summarized the principles established in *Miglin v Miglin*, 2003 SCC 24, and *Rich v Brandsema*, 2009 SCC 10. Judicial intervention may be warranted where an agreement is procedurally or

substantively flawed and where one party has exploited the vulnerability of another. At the same time, courts recognize that parties should generally be free to determine for themselves the bargains they are prepared to make.

[53] Ms. Walsh does not allege fraud, duress, misrepresentation, or any other vitiating factor. Her position is simply that no settlement agreement was reached.

[54] Like any contract, a settlement agreement requires a meeting of the minds. In ***Shibley v Shibley***, 2025 ABKB 592 at para 48, Justice Brookes explained:

Parties will be found to have reached a meeting of the minds, in other words be *ad idem*, where it is clear to the objective reasonable bystander, in light of all the material facts, that the parties intended to contract and the essential terms of that contract can be determined with a reasonable degree of certainty: ***Ron Ghitter Property Consultants Ltd v Beaver Lumber Company Limited***, 2003 ABCA 221 at para 9.

[55] Similar observations were made in ***Arndt v Scandinavian Cultural Society of Calgary***, 2019 ABQB 475 at para 32 and in ***JH Drilling v Barsi Enterprises Ltd***, 2026 ABKB 48 at para 27. The parties must reach agreement on the essential terms.

[56] Although Ms. Walsh suggests there were matters to which she “did not agree”, she identifies no specific term that remained unresolved.

[57] As noted earlier, Justice Kirker prepared a draft Consent Order that she believed “captures everything that was agreed to”. I have reviewed that draft. It addresses the total award, including costs, interest, and disbursements; statutory tax withholdings; amounts payable to Ms. Walsh’s former lawyers; amounts to be paid into Court pending resolution of the matrimonial property proceedings; confidentiality; the discharge of writs; releases; and related matters. The draft Consent Order also incorporates, as a schedule, a detailed chart prepared by Mobil’s counsel setting out the judgment amount, costs, disbursements, taxes, pre-judgment interest, post-judgment interest, and related calculations. The schedule permits the precise amount payable to Ms. Walsh to be determined.

[58] Having reviewed these materials and having considered the symmetry of evidence of all the parties, other than Ms. Walsh, I conclude that the JDR resulted in a binding settlement agreement. The essential terms were agreed upon and are reflected in Justice Kirker’s draft Consent Order, together with the attached schedule and the minor modifications subsequently made by the parties. Those documents are attached to these Reasons as Schedule “A”.

[59] That conclusion is not undermined by the fact that the parties’ failed to finalize the settlement documentation. In ***Buterman v Greater St. Albert Roman Catholic Separate School District No 734***, 2017 ABCA 196 at para 46, the Court of Appeal quoted as follows from ***Feiguth v Acklands Ltd*** (1989) 37 BCLR (2d) 62 (CA) at para 44:

It should not be thought that every disagreement over documentation consequent upon a settlement, even if insisted upon, amounts to a repudiation of a settlement. Many such settlements are very complicated, such as structured settlements, and the deal is usually struck before the documentation can be completed. In such cases the settlement will be binding if there is agreement on the essential terms.

[60] Similarly, the Court in ***Shibley*** held at paras 56 and 57:

The fact the draft Separation Agreement was not executed by the parties does not detract from the validity of the Agreement reached. As stated in **Diegel** at para 25:

A firm settlement contract can sometimes be found to have been reached even if there remain unsettled details, if there is formal legal documentation to be prepared or if certain steps are to be taken to execute the agreement, provided that the unsettled details do not go to the heart of the matter and that the uncompleted documents or steps are merely matters of carrying out what are essentially agreed to terms of the existing agreement: see **Klemke Mining Corporation v Shell Canada Ltd. et al.**, [2008 ABCA 257].

Once the essential terms of the Agreement were agreed upon, there was a valid agreement in place: **RMB v RJJG**, 2019 ABQB 591 at paras 7 to 41; [**Buterman**] at paras 22 to 60.

[61] In my view, that is precisely what occurred here. The parties left the JDR having agreed upon the essential terms of settlement. To adopt Justice Kirker’s words, what remained was simply “to document the agreement”.

[62] At some point thereafter, Ms. Walsh came to believe that no agreement had been reached. However, the test is objective. On a balance of probabilities, an objective observer reviewing the evidence would conclude that the parties reached an agreement. However sincerely held, Ms. Walsh’s belief is mistaken.

B. Limitations

[63] Recognizing my conclusion that the parties entered into a binding settlement agreement, it is unnecessary to decide Mobil’s cross application. Nevertheless, given the importance of the issue, I will address it briefly.

[64] Mobil relies on s. 27 of the *Civil Enforcement Act*, RSA 2000, c C-15, which reads:

27(1) A writ is in force only while the judgment in respect of which the writ is issued is in force.

(2) For the purposes of subsection (1), a judgment is not in force

(a) if it has been satisfied, or

(b) on the expiration of 10 years from the day that the judgment takes effect unless the judgment is renewed or an action is brought on that judgment within the 10-year period.

[65] Mobil also relies upon s. 11 of the *Limitations Act*, RSA 2000, c L-12:

11 If, within 10 years after the claim arose, a claimant does not seek a remedial order in respect of a claim based on a judgment or order for the payment of money, the defendant, on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim.

[66] Taking into account the suspension of limitation periods arising from the COVID-19 pandemic, Mobil argues that the Remedy Decision, having been filed on September 29, 2010, had to be enforced or renewed by December 13, 2020. Ms. Walsh did neither.

[67] Mobil submits that the Court lacks jurisdiction to extend that limitation period. It therefore argues that, absent a binding settlement agreement arising from the JDR, it is now immune from liability to Ms. Walsh.

[68] This Court has acknowledged that the consequences of these limitation periods may be severe. Mobil relies on the observations of Justice Malik in *Sunridge Nissan Inc v Colony Homes Inc*, 2021 ABQB 928, aff'd 2023 ABCA 128, where he emphasized that judgments must be renewed or enforced within the statutory period and that courts cannot disregard the legislative policy embodied in those limitation provisions.

[69] I agree with Mobil that, absent the settlement agreement reached through the JDR, the Remedy Decision would no longer be enforceable. The result would be harsh: after decades of litigation, Ms. Walsh would recover nothing. Fortunately for Ms. Walsh, Mobil acknowledged that it remained bound if the JDR produced a valid settlement agreement. I have found that it did. As a result, Mobil's cross application is effectively moot.

[70] Both Mobil and Ms. Walsh relied on the standstill agreement entered during the JDR. I agree with Mobil that the agreement expressly excluded any limitation period that had expired before its execution. Because the standstill agreement was entered into in 2023 and the relevant limitation period expired in 2020, the agreement could not revive the Remedy Decision or otherwise assist Ms. Walsh.

VI. Conclusion and Costs

[71] For these reasons, Hope PC's application to enforce the settlement agreement reached at the 2023 JDR is granted. Mobil's cross application seeking a declaration that the award to Ms. Walsh is statute-barred is dismissed. Ms. Walsh's application for relief arising from the Bensler Order, previously adjourned sine die, is also dismissed.

[72] Mobil seeks costs in respect of its cross application. Although I have found that application had merit, I decline to award costs because my determination of Hope PC's application effectively rendered it moot.

[73] Hope PC seeks full indemnity costs. in respect of its application. I am not prepared to make such an award. In the absence of a contractual entitlement, enhanced costs are generally reserved for cases involving litigation misconduct: *Eist v Goldstick Estate*, 2019 ABCA 508. While I have concluded that Ms. Walsh is mistaken in her position that the JDR did not result in a settlement agreement, an unsuccessful position does not, without more, constitute litigation misconduct. I am not persuaded that her position was advanced for tactical reasons or for the purpose of prolonging the litigation.

[74] Costs are discretionary and must be determined in accordance with the governing principles. Those principles include the considerations set out in Rules 10.31 and 10.33, as well as the guidance provided in cases such as *McAllister v Calgary (City)*, 2021 ABCA 25, and *Barkwell v McDonald*, 2023 ABCA 183. While Rules 10.31 and 10.33 identify specific factors to be considered, Rule 10.33(1)(g) permits the Court to consider "any other matter related to the question of reasonable and proper costs that the Court considers appropriate".

[75] In my view, the predominant consideration in this case is the need for finality. The interests of all parties are best served by bringing this litigation to an end. In that regard, the comments of the Court of Appeal in ***Radhakrishnan*** at paras 43-46 are apt:

Each party to a settlement makes concessions and assumes some risk, in favour of bringing the dispute to an end. Interests of finality prevail, unless there are contractual problems such as fraud, misrepresentation, duress, undue influence, unconscionability, or mutual or unilateral mistake.

...

The public interest in finality is noticed in ***Christiansen v. Bachul*** [2001 ABQB 100] (para. 16): “There is a well-established policy in favour of finality of litigation. To accede to this application would undermine that policy.” ...

Doherty J.A. discussed finality:

“Finality is an important feature of our justice system, both to the parties involved in any specific litigation and on an institutional level to the community at large...

The parties and the community require that there be a definite and discernable end to legal disputes. There must be a point at which the parties can proceed on the basis that the matter has been decided and their respective rights and obligations have been finally determined. Without a discernable end point, the parties cannot get on with the rest of their lives secure in the knowledge that the issue has finally been determined...”

[76] To use Justice Binnie’s more literary description in ***Lax Kw’alaams Indian Band v Canada (Attorney General)***, 2011 SCC 56 at para 41, “The trial of an action should not resemble a voyage on the *Flying Dutchman* with a crew condemned to roam the seas interminably with no set destination and no end in sight”.

[77] At its core, this application required the Court to clarify the basis upon which the parties were to bring this litigation to a close. In my view, it would be unreasonable to permit the issue of costs to become yet another source of dispute and further prolong proceedings that have already extended over many years. In the unique circumstances of this case, and in the interests of finality, I exercise my discretion to order that each party bear its own costs.

Heard on the 6th day of July 2026.

Dated at the City of Calgary, Alberta this 27th day of August 2026.

D.A. Labrenz
J.C.K.B.A.

Appearances:

E. Jane Butcher
Langford Law
for the Applicant

Richard F. Steele and Alanna Wiercinski
Burnet, Duckworth & Palmer LLP
for the Respondent

Delorie Diane Walsh
self represented

Donald Harvey Walsh
self represented

Shirish P. Chotalia, KC
self represented (present for only part of the application)

SCHEDULE A

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COURT OF APPEAL OF ALBERTA

COURT OF APPEAL FILE NUMBER: 2201-0193AC

TRIAL COURT FILE NUMBERS: 0201-02794
0601-00726
0903 11937
1001-14246
1401-02306

REGISTRY OFFICE: Calgary

BETWEEN: DELORIE DIANE WALSH

APPELLANT

MOBIL OIL CANADA; aka EXXONMOBIL
CANADA LTD.

RESPONDENT

STEPHEN M.K. HOPE PROFESSIONAL
CORPORATION

NOT A PARTICIPANT IN APPEAL BUT PARTY
TO THIS CONSENT ORDER

SHIRISH CHOTALIA AND PUNDIT & CHOTALIA

NOT A PARTICIPANT IN APPEAL BUT PARTY
TO THIS CONSENT ORDER

CONSENT ORDER

Further to Settlement Agreement Among the Parties to this Order

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DATE ON WHICH ORDER WAS PRONOUNCED:	July XX, 2023
PLACE CONSENT ORDER WAS MADE:	Calgary, Alberta
NAME OF JUDGE WHO GRANTED THIS ORDER:	Justice Anne Kirker

Delorie Walsh, Mobil Oil Canada, also known as Exxon Mobil Canada Ltd, ("Mobil"), and Ms. Walsh's former lawyers, Stephen Hope Professional Corporation ("Hope"), Shirish Chotalia, and Pundit & Chotalia ("Chotalia") (together, the "Former Lawyers"), participated in a Judicial Dispute Resolution Conference ("JDR") with Justice Kirker over two days on February 3 and June 2, 2023.

The parties agreed to participate in the JDR to try to resolve issues that remained outstanding between Ms. Walsh and Mobil, and between Ms. Walsh and her Former Lawyers, so that all the orders, awards, and judgments in the various proceedings between and among them could be fully and finally satisfied and the actions concluded. The proceedings affected by this Consent Order include: Alberta Human Rights Commission File Nos S9105034 and S9507036; Court of King's Bench Action Nos 0201-

02794, 0601-00726, 0903-11937, 1001-14246, 1401-02306 and 2201-04563; and Court of Appeal File Nos 0701-0201, 1201-0235 and 2201-0193.

The parties agree that the amounts set out in Schedule A to this Consent Judgment reflect the monetary terms they agreed to. In summary:

- (a) Mobil and Ms. Walsh agreed that the total award, inclusive of costs, interest, and disbursements, arising from decisions rendered by the Alberta Human Rights Commission in File Nos S9105034 and S9507036; the Court of King's Bench in Action Nos 0201-02794, 0601-00726, 1001-14246; and the Court of Appeal in File Nos 0701-0201 and 1201-0235, is \$1,313,948.20 (the "Total Award").
- (b) Of the Total Award, Mobil will withhold \$327,505.90 in statutory tax withholdings.
- (c) Of the Total Award, Mobil has already paid \$343,021.37 into Court pursuant to the Order of Applications Judge Farrington filed October 27, 2020, in Action No 1401-02306. This amount was subsequently paid by the Clerk of the Court to Hope pursuant the Order of Applications Judge Farrington filed December 9, 2020, in the same action.
- (d) Of the Total Award, Mobil has already paid \$40,000 to Hope's trust account pursuant to the Order of Justice Jeffrey filed November 22, 2011, in Action No 1001-14246. These funds remain in trust.
- (e) Ms. Walsh agreed to pay, and her Former Lawyers agreed to accept \$60,504.76, inclusive of costs, interest, disbursements, fees, and GST, in full and final satisfaction of all orders and the judgment the Former Lawyers obtained against Ms. Walsh in Court of King's Bench Action Nos 0903-11937 and 1401-02306. This amount will be paid from the Total Award.
- (f) The net amount payable by Mobil once the above amounts agreed to by the parties are accounted for is \$542,916.17 (the "Net Award"). A portion of this Net Award will be paid into the Court of King's Bench in accordance with a separate agreement reached between Ms. Walsh and Donald Harvey Walsh to end Action No 2201-04563 (commenced by Originating Application by Mr. Walsh) and the resulting appeal of the Order of Justice Bensler filed July 27, 2022, being Appeal No 2201-0193AC. The balance will be paid by Mobil to Ms. Walsh.

- (g) Ms. Walsh's Former Lawyers agreed to pay, and Ms. Walsh agreed to accept \$2,247.32 in interest earned on the \$40,000 held in Hope's trust account pursuant to the Jeffrey J. Order filed November 22, 2011. The \$2,247.32 in interest will be paid directly to Ms. Walsh by Hope. The \$40,000 held in Hope's trust account is then to be released to Hope, as per paragraph 7, herein.

The parties agree that compliance with this Consent Order shall operate to resolve all outstanding issues between them fully and finally and will bring Alberta Human Rights Commission File Nos S9105034 and S9507036, and Court of King's Bench Action Nos 0201-02794, 0601-00726, 0903-11937, 1001-14246, and 1401-02306, to an end. Court of Appeal File Nos 0701-0201 and 1201-0235 are closed. This Consent Order is binding upon and is for the benefit of the parties and their respective successors, assigns, parent entities, subsidiaries, affiliates, partners, officers, directors, employees, heirs, executors, administrators, insurers, and agents, as the case may be.

The parties agree that they will cooperate to ensure the terms of this Consent Order are satisfied.

The parties further agree that they have had the opportunity to seek legal advice with respect to the terms of this Consent Order and that they understand it. They all voluntarily and of their own free will agreed to make the compromises reflected in the terms of this Consent Order.

IT IS HEREBY ORDERED THAT:

1. Within 30 days of the date this Consent Order is filed, and provided that Mobil has received a filed copy of the order to be consented to by Ms. Walsh and Mr. Walsh directing that \$240,881 of the Net Award be paid into the Court of King's Bench (the "Walsh Consent Order"), Mobil shall pay \$240,881 to the Clerk of the Court of King's Bench as directed by the Walsh Consent Order. The Clerk shall provide Mobil with written confirmation of receipt of these funds. A copy of that written confirmation shall be provided by Mobil to Ms. Walsh.
2. Within 30 days of the date this Consent Order is filed, and provided that Mobil has received a filed copy of the Walsh Consent Order referred to in paragraph 1 above, Mobil shall pay the balance of the Net Award, being \$302,035.17, to Ms. Walsh. Ms. Walsh shall provide Mobil with written confirmation that she has received these funds upon receipt.
3. The written confirmations of receipt by the Clerk of the Court of King's Bench of \$240,881 and by Ms. Walsh of \$302,035.17, shall serve to fully and finally release Mobil and its successors, assigns, parent entities, subsidiaries, affiliates, partners,

officers, directors, employees, agents, and insurers from any and all claims of any and every kind and nature whatsoever, at law or in equity, which Ms. Walsh ever had, now has, or may hereafter have arising from or in any way related to the facts and issues adjudicated in Alberta Human Rights Commission File Nos S9105034 and S9507036; Court of King's Bench Action Nos 0201- 02794, 0601-00726, 0903-11937, 1001-14246, and 1401-02306; and, Court of Appeal File Nos 0701-0201 and 1201-0235.

4. Nothing in this Consent Order shall prevent Ms. Walsh from seeking a refund from the Minister of National Revenue, or any other tax, Canada Pension Plan (Canada) or Employment Insurance Act (Canada) authority, of any portion of the statutory amounts withheld by Mobil. Ms. Walsh shall indemnify Mobil from and against any claims, taxes or penalties and demands, which may be made by the Minister of National Revenue requiring Mobil to pay income tax under the *Income Tax Act* (Canada) in respect of income tax payable by Ms. Walsh in excess of the income tax previously withheld; and in respect of any and all claims, charges, taxes or penalties and demands which may be made pursuant to the *Canada Pension Plan* (Canada) or the *Employment Insurance Act* (Canada) or any other applicable federal or provincial statute or regulation, with respect to any amount which may, in the future, be found to be payable by Mobil in respect of Ms. Walsh relating to the payment of the settlement amounts.
5. Ms. Walsh shall not directly or indirectly, whether orally, in writing, by electronic transmission or other medium, make, communicate, disseminate, or publish any disparaging statements about Mobil or its successors, assigns, parent entities, subsidiaries, affiliates, partners, officers, directors, employees, agents, including its legal counsel, or insurers. This does not include statements made in publicly filed decisions of the Alberta Human Rights Commission, the Alberta Court of King's Bench, or the Court of Appeal.
6. Ms. Walsh shall take reasonable precautions to safeguard any confidential and proprietary information she had access to during her employment with Mobil.
7. Within 30 days of the date this Consent Order is filed, Mobil shall also pay \$60,504.76 to the Former Lawyers in the following manner:
 - a. Mobil shall confirm, in writing, that the trust conditions upon which the \$40,000 was paid to Hope in trust have been satisfied so that the \$40,000 can be released to Hope. Hope shall receive these funds on behalf of the Former Lawyers and shall provide written confirmation to both Mobil and Ms. Walsh that it has received these funds on behalf of the Former Lawyers upon receipt.
 - b. Mobil shall pay to Chotalia \$50,252.38, being Chotalia's half, and Mobil shall pay to Hope \$10,252.38, being the remainder of Hope's half, as full and final settlement.
8. Upon receipt of the funds referred to in paragraph 7, the Former Lawyers shall discharge, forthwith, the Writ of Execution registered in the land title office against title

to Ms. Walsh's property and provide Ms. Walsh with written confirmation that the Writ of Execution has been discharged.

9. The written confirmations of receipt of the funds referred to in paragraph 7 shall serve to: (a) fully satisfy and release the first-charge granted by Justice Acton on July 10, 2014 in Court of King's Bench Action No 0903-11937; and (b) fully and finally release Ms. Walsh and Mobil and their respective heirs, executors, administrators, successors, assigns, parent entities, subsidiaries, affiliates, partners, officers, directors, employees, agents, and insurers, as the case may be, from any and all claims of any and every kind and nature whatsoever, at law or in equity, which the Former Lawyers ever had, now have, or may hereafter have arising from or in any way related to the facts and issues adjudicated in Alberta Human Rights Commission File Nos S9105034 and S9507036; Court of King's Bench Action Nos 0201-02794, 0601-00726, 0903-11937, 1001-14246 and 1401-02306; and, Court of Appeal File Nos 0701-0201 and 1201-0235.
10. Within 30 days of receipt of written confirmation from Mobil that the trust conditions in relation to the \$40,000 held in trust by Hope have been satisfied, Hope shall deliver \$2,247.32 to Ms. Walsh. Ms. Walsh shall provide Hope written confirmation that she has received these funds upon receipt.
11. Once the parties have fulfilled their payment obligations under this Consent Order, and in the case of the Former Lawyers, the additional obligation to discharge the Writ of Enforcement and to pay \$2,247.32 to Ms. Walsh, they may file proof of compliance with these terms as evidence that they have satisfied them.

Anne L. Kirker,
Justice of the Court of Appeal of Alberta

Delorie Diane Walsh

Consented to this _____ day of _____, 2023

Richard Steele, counsel for Mobil Oil Canada aka ExxonMobil Canada Ltd.

Consented to this _____ day of _____, 2023

Vanessa Hope for Stephen M.K. Hope Professional Corporation

Consented to this _____ day of _____, 2023

Shirish Chotalia for Pundit & Chotalia

Consented to this _____ day of _____, 2023

Shirish Chotalia

Consented to this _____ day of _____, 2023

Schedule "A"

Settlement Agreement dated February 3, 2023

Judgment	
Judgment (2010 AHRC 9) First Complaint General Damages: \$10,000 Second Complaint General Damages: \$25,000 Loss of Income August 14, 1989 to December 31, 2000: \$472,766 Loss of Pension August 14, 1989 to December 31, 2000: \$139,154 Treatment Expenses: \$10,000	\$656,920.00
Personal Costs Decision (2012 AHRC 10)	\$2,900.00
Bills of Costs	
Bill of Costs: Preliminary Delay Application before AHRC September 19 and 20, 2001 (2002 AHRC 1)	\$5,000.00
Bill of Costs: Appeal of Delay Decision before ABQB April 8, 2004 (1/2 day) (2004 ABQB 675)	\$2,500.00
Bills of Costs: Liability Decision before AHRC September 28-30 and October 21, 2005 (2005 AHRC 13)	\$24,000.00
Bill of Costs: Appeal of Liability Decision before ABQB February 1, 2007 (2007 ABQB 305)	\$3,500.00
Bill of Costs: ABQB Costs Decision October 4, 2007 (2007 ABQB 599)	\$2,500.00
Bill of Costs: Appeal of Liability Decision before ABCA March 14, 2008 (2008 ABCA 268)	\$17,000.00
Bill of Costs: Remedy Hearing Before AHRT, May 10, 11, 12, 13, 31 and June 1 and 2, 2010 (2010 AHRC 9)	\$35,500.00
Pre- and Post-Judgment Interest ¹	
Pre-Judgment Interest on Loss of Income	\$418,066.99
Post-Judgment Interest on Loss of Income (up to February 3, 2023)	\$47,041.58
Pre-Judgment Interest on General Damages	\$22,671.00
Post-Judgment Interest on General Damages (up to February 3, 2023)	\$3,482.61
Post-Judgment Interest on Treatment Expenses Award (up to February 3, 2023)	\$995.03
Post-Judgment Interest on Pension Award (up to February 3, 2023)	\$13,847.22
Post-Judgment Interest on Costs (up to February 3, 2023)	\$14,700.68

¹ The post-judgment interest figures are net a 25% reduction.

Disbursements	
Hope disbursements	\$25,323.09
Walsh disbursements	\$5,000.00
Interest on Hope disbursement account (Mobil contribution)	\$13,000.00
Total Judgment, including Costs, Interest and Disbursements	\$1,313,948.20
Less Statutory Tax Deduction on Loss of Income, Loss of Pension, Costs and Disbursement	(\$327,505.90)
Federal Tax	(\$221,712.00)
Provincial Tax	(\$101,036.00)
CPP	(\$3,754.45)
Employment Insurance	(\$1,002.45)
Net Total Award	\$986,442.30
Less funds held in Steven H. K. Hope Professional Corporation trust account	(\$40,000.00)
Less Amounts Paid into Court pursuant to Farrington Order (garnishment)	(\$343,021.37)
Less Net Amount to be Paid to Hope and Chotalia:²	(\$60,504.76)
Collection costs	(\$6,768.64)
Denton's trial costs	(\$2,025.00)
"Other charges" from Justice Woolley costs endorsement (2019 ABQB 711)	(\$3,000.00)
Hope disbursement account	(\$32,426.34)
Interest on Hope disbursement account (Deiorie contribution)	(\$18,000.00)
Interest on Hope disbursement account (Mobil contribution)	(\$13,000.00)
Trial costs	(\$625.00)
30% of the fees portion of the taxable costs payable by Exxon to D. Walsh (excluding for 2002 AHRC 1 and 2004 ABKB 657) ³	(\$24,659.78)
Net Award	542,916.17

² This figure was calculated based on the totals in this row (\$100,504.76) minus the \$40,000 currently held in the trust account of Stephen M. K. Hope pursuant to the Order of Justice Jeffrey filed November 22, 2011.

³ This figure was calculated as follows:

- The portion of the total Bills of Costs sought by D. Walsh (\$101,415) that Exxon was willing to pay (\$90,000) is 89%.
- D. Walsh was originally seeking \$6,405 in fees on account of 2002 AHRC 1.
- D. Walsh was originally seeking \$2,360 in fees on account of 2004 ABQB 675.
- $(\$6,405 + \$2,360) \times 89\% = \$7,800.85$
- $(\$90,000 - \$7,800.85) \times 30\% = \$24,659.78$