

BC HUMAN RIGHTS TRIBUNAL QUESTIONS ENFORCEABILITY OF RELEASE

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In *Fyffe v University of British Columbia*, 2024 BCHRT 88, the BC Human Rights Tribunal released a decision that considered whether the release an employee signed during her termination meeting should bar her claim from moving forward.

Despite clear terms of the signed release, the Tribunal has said there isn't enough information to dismiss the complaint. Therefore, this decision serves as a reminder of the importance of following best practices when seeking a release from an employee.

Background

This decision followed an application by the employer to dismiss the employee's claim, in part due to a release she signed during her termination meeting.^[1] Despite the University's dismissal attempt, the Tribunal has left this matter open, pending a hearing.

In the underlying complaint, the employee, a woman of Caribbean and West Indian ancestry, alleged that her termination was influenced by race-based discrimination by her employer. The employee alleged that her supervisor made racially-charged comments and assumptions about her performance, and her termination was "tainted by subconscious discriminatory attitudes". The employer denied these claims, stating that the employee's termination was not influenced in any way by her race. The employer also asserted that the employee failed to complete her tasks and did not have the skills she indicated having during the interview process.

Assessing the Release

The Tribunal considered whether the release signed by the employee at her termination meeting should bar the claim entirely. The Tribunal considered the following factors in assessing the release:^[2]

1. the language of the release and what it covers;
2. the presence of unconscionability (an inequality of bargaining power and a substantially unfair settlement);

3. the presence of undue influence;
4. whether the employee received independent legal advice;
5. the existence of duress and related issues such as financial need and timing;
6. the knowledge of the employee of their rights; and
7. other considerations such as lack of capacity, mutual mistake, fraud, forgery, etc.

The Tribunal ultimately determined that it did not have enough information to dismiss the claim because of the release. In coming to this decision, it highlighted that the employer asserted that it told her to take time to read the release and that she had a week to consider the severance offer before accepting and signing the release. Conversely, the employee signed the release during the termination meeting, without taking any time to read it, and is now stating that she felt pressured to do so and would not have signed it had she known what she was signing.

On May 17, 2024, the employer filed a petition to the British Columbia Supreme Court, asking the Court to quash the Tribunal's decision. It also asked the Court to recognize and enforce the release and termination letter together as a "settlement agreement". The employer stressed the public policy interest in encouraging parties to resolve disputes voluntarily and consensually and the benefits of settlements providing finality and certainty to parties.

We will continue to monitor this case as it develops.

Best Practices for Employers

Employers often rely on releases and do not wish to face the possibility that the release may not be enforceable. This is especially true when they have agreed to pay severance or some other settlement in return.

This ongoing dispute serves as a reminder of the best practices for obtaining an enforceable release following a termination of employment or during a settlement of a related claim:

1. Releases should be written in clear, plain and simple language to the extent possible, so employees can fully understand what they are signing.
2. The termination letter should be clear that the employee would still be entitled to their statutory (and, in some cases, contractual) entitlements should they not accept the offer for severance and sign the release.
3. Employers should not have an employee sign a release during or immediately following a termination meeting. Rather, employers should encourage terminated employees to take the time to read through the release to ensure the employee understands the effects and obtaining consequences of the release.

Should you have any questions about ensuring your releases are enforceable, a member of McMillan's Labour

and Employment Group would be happy to assist.

[1] We note that the Tribunal also considered whether there was no reasonable prospect that the employee's claim that race was a factor in her termination would be successful, but this issue is beyond the scope of this bulletin.

[2] These factors were drawn from *Thompson v Providence Health Care*, 2003 BCHRT 58.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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