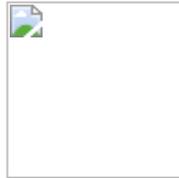


April 29, 2015

"Full and final settlement of any and all claims" – not so, says the Alberta Human Rights Tribunal



By [Kelsey Dick](#)

The Alberta Human Rights Tribunal ("Tribunal") released a decision this month that considered whether the terms of a Release Agreement constituted a valid and enforceable settlement of an employee's allegations of human rights discrimination arising from employment.

In *Hutton v ARC Business Solutions Inc*, 2015 AHRC 7, the employee signed an Employee Termination Notice (the "Release") that offered severance pay as "full and final settlement of any and all claims for compensation with respect to the termination of [the employee's] employment." After signing the Release, the employee filed a human rights complaint with the Alberta Human Rights Commission. The issue before the Tribunal was whether the Release was a waiver of the employee's right to make a human rights complaint arising from her termination.

When determining whether settlement agreements in human rights complaints are valid and enforceable, there are a number of factors that may be considered: [1]

1. The actual language of the release itself as to what is included, explicitly or implicitly;
2. Unconscionability, which exists where there is an inequality of bargaining power *and* a substantially unfair settlement;
3. Undue influence, which will usually be made out where there has been an improper use of coercion, oppression, abuse of power or authority, or compulsion in order to make the other party consent;
4. The existence of independent legal advice;
5. The existence of duress (not mere stress or unhappiness), as well as sub-issues of timing and financial need;
6. The knowledge of the party executing the release as to their rights, and potentially, the knowledge of the party receiving the release that a potential human rights complaint is contemplated; and
7. Other considerations, which may include lack of capacity, timing of the complaint, mutual

mistake, forgery, and fraud.

In *Hutton*, the mere fact that the compensation paid to the employee upon termination exceeded the statutory minimum requirement was not sufficient to establish that "compensation" included damages arising from a human rights complaint. Significantly, the Tribunal found that there was no indication in the actual language of the Release that it contemplated a release or waiver of any alleged human rights violation.

While it is possible to release liability for past acts of discrimination in a termination notice, the language must be considerably more specific than the release language used in *Hutton*. A specific clause that acknowledges release of liability for any past acts of discrimination under human rights legislation is more likely to be upheld and prevent the continuation of the human rights complaint. [2]

The language used in the Release must therefore reference more than simply issues of "compensation." In *Hutton*, the remaining factors listed above were also considered and reinforced the Tribunal's conclusion that the language in the Release did not extend to release the employer from liability related to the employee's human rights complaint. As such, the Tribunal concluded that the Human Rights Commission had authority to continue with the complaint.

Employers seeking to rely on releases or settlement agreements that include a release of liability for human rights violations should utilize clearly worded clauses that specifically acknowledge release of liability for past acts of discrimination. Field Law's Labour and Employment Group can advise and assist employers with respect to drafting and reviewing comprehensive releases and other matters related to human rights.

[1] As set out by Justice Rooke in *Chow v Mobil Oil Canada*, 1999 ABQB 1026 at para 104.

[2] See, for example, *Stergiou v Apache Canada Ltd*, 2015 AHRC 1 at para 20.

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