YOUNG ANDERSON
BARRISTERS & SOLICITORS

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BULLETIN

HUMAN RIGHTS COMPLAINT PROCEEDS TO HEARING, DESPITE SIGNED RELEASE

The BC Human Rights Tribunal (the "Tribunal") recently issued a decision in ***Fyffe* v. *University of British Columbia***, 2024 BCHRT 88. In that case, the University had applied to the Tribunal to dismiss the complaint without a hearing on the ground that it would not further the purposes of the *Human Rights Code* (the "*Code*") to allow the complaint to proceed, as the complainant had signed a release agreement releasing the University from all claims related to the termination of her employment, including claims arising under the *Code*. The Tribunal denied the University's application and held that the complaint would proceed to a hearing where the issue of whether the release agreement barred the claim could be raised again by the University and decided after oral evidence. In applications to dismiss, the parties typically submit affidavit evidence in support of their positions and there is no oral testimony.

The complainant, a Black woman of Caribbean and West Indian ancestry, alleged that the University discriminated against her in employment based on race and colour contrary to Section 13 of the *Code* when it terminated her employment. She claimed that her termination was influenced by subconscious discriminatory attitudes about Black workers which were reflected in comments and assumptions made by her supervisor. The University denied discriminating against the complainant and contended that it dismissed her because she lacked the skills necessary to perform her job. The University alleged that the complainant did not have the software skills that she claimed during the interview process, and that she failed to complete assigned tasks.

When dismissing the complainant, the University paid her one week's salary in lieu of notice. It also offered her an additional three weeks' pay in exchange for signing a release. The University gave her one week to sign and return the release. However, the complainant signed and returned the release during the termination meeting.

In the application to dismiss process, the complainant claimed that she was under financial pressure to sign the release right away because she needed to pay her rent. She said that she did not read the release before signing it given the emotional nature of the termination meeting. She also said that she would not have signed the release without first getting advice if she had read it or understood it.

The Tribunal noted that there was a strong policy rationale for holding people to their settlement agreements. Considerable public and private resources may be saved when parties are able to resolve human rights disputes via a settlement agreement. The parties may also be able to craft a resolution which more closely matches their needs and interests than would a decision of the

Tribunal. However, the Tribunal also stated that the fact that parties have entered into a settlement agreement regarding a human rights dispute does not remove the Tribunal's jurisdiction to hear the dispute. The Tribunal stated in that regard that the parties cannot contract out of their rights under the *Code*.

The Tribunal also held, based on its prior decision in ***Thompson v. Providence Health Care***, 2003 BCHRT 58, that there are several factors that may signal that terms of settlement or the conditions under which a settlement was reached are contrary to the *Code's* purposes, such that a complaint should proceed despite the settlement agreement. In other words, there are circumstances in which a settlement and release will not bar a human rights complaint from proceeding. The Tribunal quoted the following factors from ***Thompson***:

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 may arise where the complainant seeks to attack the sufficiency of consent. A plea of this nature will be made out where there has been an improper use by one party to a contract of any kind of coercion, oppression, abuse of power or authority, or compulsion in order to make the other party consent.

4. The existence or absence of independent legal advice may also be considered. However, if a party has received unreliable legal advice that may not affect the settlement.

5. The existence of duress (not mere stress or unhappiness) and sub-issues of timing, financial need, and the like, may also be factors.

6. The knowledge on the party executing the release as to their rights under the [*Code*], and, possibly, the knowledge on the party receiving the release that a potential complaint under the [*Code*] is contemplated.

7. Other considerations may include lack of capacity, timing of the complaint, mutual mistake, forgery, fraud, etc.

In the ***Fyffe*** decision, the Tribunal was unable to assess those factors. The parties provided conflicting evidence as to what was said at the termination meeting. The Tribunal found the conflicts in the evidence to be irreconcilable on the evidence that was before it. The University's human resources advisor was the person leading the termination meeting, and stated that she had explained the termination letter and release to the complainant, including that the release agreement would release the University from further claims, and that the complainant had one week to consider and sign the release, and that she was entitled to speak with her bargaining agent about the release. The complainant on the other hand said that she was emotionally shocked, overwhelmed and confused during the termination meeting. The complainant contended that at no point did the human resources advisor inform her that she would be releasing the University from all claims if she signed the release. The complainant said that if she had known that she would not have signed the release and would have gotten legal advice. She also said that the human resources advisor did not tell her that she was entitled to speak with her bargaining agent before signing the release.

Because of those conflicts in the evidence, the Tribunal held that it could not properly assess the ***Thompson*** factors or conclude that proceeding with the complaint would not further the purposes of the *Code*. The Tribunal held that the issue should be left for determination at a hearing, if the University wanted to raise the issue there.

This case provides employers seeking to rely on release agreements with some best practices to increase the likelihood that a release agreement obtained in the context of a termination will be enforceable:

1. The release agreement should be written in as clear and plain language as possible.

2. Employers should be mindful of the inequality of power between the employer and the employee generally, and especially during a termination meeting. Employees should not be pressured to sign the release agreement during the termination meeting. Instead, employees should be given time to read and consider the release agreement, outside of the termination meeting.

3. Employees should be informed of their right to obtain independent legal advice and should be encouraged to do so.

We also recommend that local government employers contact us for advice before terminating an employee and presenting them with a release agreement.

Michelle Blendell