

Settlement And Release: The Final Destination?



Early resolution of human rights matters results in many benefits, including opportunities for efficiency, lower cost and creativity. However, a signed release of legal claims and complaints may not be the end of the road.

A release will not always protect employers from liability under the *Human Rights Code*, R.S.B.C. 1996, c. 210 (the “Code”) as people cannot contract out of those legislated rights: *Insurance Corporation of British Columbia v. Heerspink*, [1982] 2 S.C.R. 145 at p. 158.

That said, the B.C. Human Rights Tribunal (the “Tribunal”) recognizes the policy reasons to honour certain agreements, including because parties may reach resolution more expeditiously and in a manner that better matches their needs and interests: see, for example, *Nguyen v. Prince Rupert School District No. 52*, 2004 BCHRT 20 at para. 15.

In *Battaglia v. Pretium Resources Inc.*, 2023 BCHRT 153, the Tribunal dismissed a complaint on the basis that it would not further the purposes of the *Code* because the parties previously settled the complaint. *Battaglia* is an example of how employer conduct during negotiations can support the Tribunal’s decision to honour a settlement.

The complainant in *Battaglia* worked at the respondent’s mine and resided in camp housing. When not working, he lived in Thailand with his family. During the early months of the COVID-19 pandemic, he travelled to Canada for work. Before resuming work, the respondent terminated his employment and he was left in Canada, unemployed and experiencing housing challenges.

The respondent offered three weeks of salary and an extension of benefits in exchange for a signed release of all claims and complaints that expressly referenced the *Code* and provided the complainant with the opportunity to obtain independent legal advice. The complainant rejected the offer, and the parties began to negotiate.

The complainant made several counter-offers, at least one of which contemplated payment to travel back to Thailand. The respondent then offered three months of pay, an extension of benefits and \$5,000 to assist with travel in exchange for a signed release.

The complainant agreed. After signing the release, he claimed the agreement was “null and void” due to an unexpected deduction. He demanded more money and proceeded to file a complaint with the Tribunal. The respondent agreed to pay the amount which had been deducted, and the complainant signed an addendum to the release which confirmed that this was a full and final settlement. However, he failed to follow through on his promise to withdraw the complaint.

The Tribunal concluded that the settlement and release were valid, considering the complainant’s sophisticated understanding of the negotiation process and awareness of the significance of a release.

The Tribunal then considered whether the complaint should proceed in spite of the valid settlement agreement.

The complainant’s main argument – his argument that he was under duress because of his precarious financial and housing situation – was rejected by the Tribunal. Despite any pressure or stress that the complainant experienced, he was not deprived of the ability to counter-offer or provide “articulate and sophisticated rationales” for his position. Importantly, he led the negotiations and obtained a significantly higher payment than originally offered, which included money to assist with his travel back home.

Battaglia reminds employers of the importance of thoughtful and carefully considered negotiation. This aligns with one of the Tribunal’s policy reasons for honouring settlement agreements – the parties may tailor their resolution to better match their particular needs and interests. The complainant in *Battaglia* was concerned about financial and housing challenges, and the respondent company thoughtfully tailored its last offer to address these concerns. When working towards early resolution, listening and adapting to reasonable concerns can be an employer’s greatest tool as it embarks on the journey to achieve settlement.

This case also reminds employers that obtaining a signature on a release may not mean the end of the journey. Certain circumstances suggest that it is appropriate to follow up about whether existing claims have been withdrawn following the execution of a release.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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