

Divisional Court upholds release against pursuing claims in pay equity complaint

Can a Release in which an employee is barred from pursuing claims against an employer be enforced despite the fact that the employer was in breach of the statute under which the employee is pursuing the claim? A panel of the Ontario Divisional Court has ruled that the answer is “yes”.

Better Beef Ltd. v. MacLean (May 31, 2006) involved a terminated employee who attempted to initiate a complaint with the province’s Pay Equity Commission. Upon termination, the employee signed a release under which she had agreed to pursue “no further claims of any description against” the employer. In exchange for signing the release, the employee received eight weeks salary in lieu of notice of termination, specified benefits and accrued vacation pay, severance pay equal to 26 weeks salary, and a letter of recommendation.

The employee requested a copy of the employer’s pay equity plan, prior to and following her termination. The employer did not respond on either occasion. Even after these requests were made by the employee, the employer failed to post a copy of the plan. Pursuant to the requirements of the *Pay Equity Act*, the employer was required to prepare or post a copy of its pay equity plan by January 1, 1990.

Section 7 of the *Act* imposes the basic obligation on employers to establish and maintain pay equity:

7(1) Every employer shall establish and maintain compensation practices that provide for pay equity in every establishment of the employer.

The *Act* also prohibits contracting out of this obligation as follows:

7(2) No employer or bargaining agent shall bargain for or agree to compensation practices that, if adopted, would cause a contravention of subsection (1).

Some time after her termination, the employee filed a complaint with the Pay Equity Commission, alleging a contravention of the *Act* by the employer.

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The Commission ordered that the employer pay the employee over \$56,000. The employer appealed to the Pay Equity Hearings Tribunal, asking the Tribunal to determine whether the Release signed by the employee barred her from making the complaint to the Commission.

The Tribunal held in favour of the employee, based on two basic reasons:

- first, the employer had failed to comply with the *Act* before the Release was signed; and
- second, the Release made no “specific reference” to the “right or rights the employer wished the employee to relinquish” under the *Act*.

The Tribunal held that the employer's failure to comply with the *Act* was fatal to its case, and stated that the common law principle of requiring enforcement of agreements should not be used to defeat the purpose of legislation such as the *Pay Equity Act*. The employer applied to have the Tribunal's decision judicially reviewed.

The Divisional Court held in favour of the employer. In upholding the validity of the Release, the Court described it in the following terms:

The Release is short, simple, unequivocal and drafted in broad terms. There is no suggestion of coercion or duress in its presentation or that its terms are oppressive or unfair. There is no allegation that Ms. MacLean did not fully understand or read English or that she did not sign the Release freely and voluntarily. [...] In our view, it is clear on a plain reading of the Release, that the employer agreed to pay monies and give certain benefits to Ms. MacLean and in return, she waived any other claims she had against it, including those emanating from the provisions of the *Act*. That is, the literal and ordinary meaning of the Release is that the parties' intention was to make a full and final release of all claims against the employer.

The Court noted that courts are extremely reluctant to set aside valid settlements where each party received something of value. There were also policy reasons behind declining to make compliance with the *Act* a precondition for finding the Release valid: to do so would discourage the efficient resolution of employment disputes. Further, the employee's Release did not function to release the employer from its obligations under the *Act* towards its other female employees.

Accordingly, the application for judicial review was granted and the Tribunal's decision quashed.

In Our View

This decision will be welcomed by employers seeking to ensure that the terms of properly concluded settlements where each party gains something of value are upheld. The Court in this case was careful to distinguish between situations in which an employee agrees to contract out of employment legislation in order to settle a dispute under that legislation, and those where employees agree to bargain away their statutory rights as a term of employment or as a precondition to being employed. As well, the Court pointed to the fact that the *Act* itself contemplates binding settlements of pay equity complaints.

For further information, please contact **Carole Piette** at (613) 940-2733.

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