

**SECTION: Procedure**

Effective date: October 8, 2014

**SUBJECT: JURISDICTION – RELEASES**

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**Purpose:**

The Manitoba Human Rights Commission (“Commission”) can only act within the authority given to it by *The Human Rights Code* (“*The Code*”). This policy sets out circumstances in which the Commission does (or does not) have jurisdiction to consider a complaint due to a release being signed by the complainant. Where there is any conflict between this policy and *The Code*, *The Code* will be followed.

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Some individuals file a complaint with the Commission after they have signed a release and/or accepted a settlement from the respondent. For example, a release or settlement document may be signed by a former employee who has received a severance package from their employer.

Under general legal principles parties cannot contract out of *The Code*. This is generally interpreted to mean that a person cannot “sign away” their future rights to file a complaint under *The Code*. It may however be considered an abuse of process to file a complaint following receipt of a settlement and/or signing a release.

In determining whether it should proceed or dismiss the complaint in these instances the Commission is guided by the leading cases of *Pritchard v. Ontario (Human Rights Comm.)*, 1999 CanLII 15058 (ON SC) and *Chow v. Mobil Oil Canada*, 1999 ABQB 1026 (CanLII), and will consider the following combined factors as to whether the release is valid:

- The wording of the release. Both the explicit and implicit language of the release is considered (i.e.: does it include a statement about releasing rights under *The Code*);
- The fairness of the release or settlement, or whether it was unconscionable. Unconscionability exists where there is an inequality of bargaining power and a substantially unfair settlement;
- Whether there was undue influence, which includes coercion, oppression or abuse of power or authority by the respondent that effectively forced the complainant to sign the release;

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- Whether the release was signed under duress including significant economic stress or emotional pressure. The test for duress is very high however and financial difficulty alone may not be sufficient, nor will mere stress or unhappiness;
  - Whether the complainant knew about and understood their rights under *The Code*. Was a potential human rights complaint contemplated by the parties and/or did the complainant receive compensation for any alleged discrimination or harassment;
  - Whether the complainant understood the significance of the release, including whether they were given sufficient time prior to signing and had the opportunity for legal advice;
  - Whether the complainant lacked the mental capacity to make an informed decision about the release;
  - Other considerations may include mutual mistake, forgery, fraud, or other reasons depending on the circumstances.

Where the release or settlement is found to be valid, proceeding with the complaint may be considered an abuse of process and the Commission may dismiss the complaint under section 29(1)(a) of *The Code*. If the Commission dismisses a complaint due to a valid release or settlement, this will not affect the Commission's ability to consider any future breaches of *The Code* by the respondent.

APPROVED BY:

"Yvonne Peters"  
Chairperson

October 8, 2014  
Date