

Alberta court rejects “boilerplate” release language in proposed class action settlement

November 09, 2020

In [*Walter v WHL*](#), the Alberta Court of Queen’s Bench refused to approve the settlement of three related class actions where the proposed release contained what is often considered “standard” or “boilerplate” language pertaining to claims that “could have been raised or advanced in the Class Actions, whether known or unknown, or by reason of any cause, matter or thing whatsoever.”

Background

The class actions concerned whether major junior hockey players in the Ontario Hockey League, the Western Hockey League and the Québec Major Junior Hockey League should be treated as employees and, thus, entitled to minimum wages prescribed by employment standards legislation in the applicable province.

All three class actions were certified and a global settlement was negotiated at mediation. Class counsel sought approval of the terms of the settlement, which was supported by the defendants. A joint hearing was conducted amongst the Superior Courts of Alberta, Ontario and Québec, pursuant to the Canadian Judicial Protocol for the Management of Multi-Jurisdictional Class Actions and the Provision of Class Action Notice.

Relying in part on Justice Perell’s analysis of the settlement in the Ontario action ([*Berg v CHL*](#)), Justice Hall was prepared to approve the Alberta action settlement in terms of the proposed amount, distribution protocol, honoraria for the named plaintiffs and proposed fee for class counsel.

The decisions

Like Justice Perell, however, Justice Hall concluded that the “Released Matters” provision of the release was overly broad. Specifically, and further to concerns raised by two objectors in the Ontario action, the Court acknowledged that the provision might potentially impact the standing of class members in a number of other existing class actions against the same defendants, and others not yet commenced.

Justice Hall indicated that “were I to approve those words in the description of Released Matters, I would be venturing outside this certified class action and approving more than I have certified.” Although the wording was described by defendants’ counsel as “standard” and “boilerplate,” Justice Hall did not accept such language as being appropriate in the settlement of a certified class action. Class counsel was invited to reapply for approval with a reworded release.

Takeaway

The decisions of both Justices Perrell and Hall serve as general reminders that settlement approval is not a rubber stamp and that seemingly standard provisions taken from outside of the class action context may raise concerns in the circumstances of a class proceeding.

By

[David Elman](#), [Samantha Bonanno](#)

Expertise

[Disputes](#), [Class Actions](#)

BLG | Canada’s Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific

situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.