

# [Taking A Page from the Globe and Mail: How to Enforce Confidentiality of Settlements](#)



When employers negotiate a settlement with a union providing for payment to an employee, there is often a concern with respect to confidentiality of the settlement. In most cases, the employer wants the settlement terms to be confidential. One of the reasons for a confidentiality agreement is to ensure that the settlement does not encourage claims by other employees who may think that the employer will make substantial payments just to get rid of a grievance. Enforcement of the confidentiality provisions in settlements is critical; there's not much point in having a confidentiality provision if there is no effective way to enforce it. The arbitration decision in *Globe and Mail v. Jan Wong* [2013 OLAA No. 273] shows that there is a very effective way to keep settlements with a union confidential.

Jan Wong worked for the *Globe and Mail* for many years. She was represented by the Communications, Energy and Paperworkers Union of Canada. When the *Globe and Mail* terminated her employment, the union filed a grievance claiming that there was no proper cause for the termination.

The union and the employer negotiated a settlement of the grievance. Under the settlement, the *Globe and Mail* made a payment to Ms. Wong. The settlement agreement provided in paragraph 6 that "the parties agree not to disclose the terms of the settlement ... to anyone other than their legal or financial advisors, Manulife and the Grievor's immediate family."

The settlement agreement further provided that:

"Should the Grievor breach the obligations set out in paragraph 5 and 6 above, (the arbitrator) shall remain seized to determine if there is a breach and, if she so finds, the Grievor will have an obligation to pay back to the Employer all payments paid to the Grievor under paragraph 3."

Jan Wong then wrote a book called *Out of the Blue* about her experience with depression and the termination of her employment at the *Globe and Mail*. In her book, she made the following references to the settlement that the union had negotiated on her behalf:

- "I can't disclose the amount of money I received"
- "I'd just been paid a pile of money to go away"

- “Two weeks later a big fat check (sic) landed in my account”
- “Even with a vastly swollen bank account.. “

As a result of those statements, the *Globe and Mail* claimed that there had been a breach of confidentiality, and Ms. Wong should repay all of the settlement money that she had received.

Jan Wong said that she thought she could disclose that she had received a payment as part of the settlement as long as she didn't disclose the amount of the payment.

The arbitrator noted that the confidentiality agreement required that the parties not disclose “the terms of this settlement” and that one of the terms of the settlement was that Ms. Wong received a payment from the employer. Accordingly, even though the amount of the payment had not been disclosed, the fact that a payment had been made was disclosed and that constituted a breach of the confidentiality agreement.

The arbitrator ordered Ms. Wong to repay the *Globe and Mail* all the money that she had received.

This case illustrates that a properly drafted confidentiality provision in a grievance settlement provides an effective and enforceable deterrent to improper disclosure.

Article by Larry Page

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