

The Value Of A Well-Crafted Settlement Document – Journalist Ordered To Repay Former Employer For Violating Confidentiality Clause



One of the most useful tools in resolving any work-related legal dispute is a well-crafted settlement document. Naturally, an employer may be inclined to vociferously defend their actions when an employee, or union, makes a serious complaint or allegation – such as that of an unjust dismissal, or workplace discrimination. But one must remember that there are always two sides to every story and the result of costly and time-consuming litigation is never certain. The benefit of a settlement is not only the control and certainty over the outcome, but also savings in terms of costs, time, and aggravation that inevitably comes with litigation in any forum. In fact, the Law Society of Upper Canada’s Rules of Professional Conduct for lawyers requires that “A lawyer shall advise and encourage the client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis”.

A recent high-profile example of the utility of a well-drafted settlement document is that of Globe and Mail, a Division of CTV Globemedia Publishing Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 87-M, [unreported at time of writing, but available on request]. In that decision a former Globe and Mail journalist, Jan Wong, was ordered to repay settlement money the employer gave her in exchange for the Union’s agreement to withdraw a termination grievance on her behalf. Jan Wong was a well-known journalist with the newspaper for many years when the political and professional backlash from a controversial story she authored triggered a bout with clinical depression. The Globe and Mail terminated her employment during a prolonged absence, and on Ms. Wong’s behalf the Union grieved that the employer failed to accommodate her disability, resulting in an unjust dismissal.

The newspaper, the Union, and Ms. Wong being additionally advised by her own personal legal counsel, worked for months to draft an acceptable settlement document. A memorandum of agreement was eventually signed by all parties, expressly stating that there would be no admission of liability, but that the Employer would pay money to the grievor to dispose of the grievance. Among the terms included, three in particular were:

5. The Employer acknowledges that the Grievor was ill and unable to attend at work from June 11, 2007 to November 13, 2007 for that reason.

6. With the exception of paragraph 5, the parties agree not to disclose the terms of this settlement, including Appendix A to anyone other than their legal or financial advisors, Manulife, and the Grievor's immediate family.

8. Should the Grievor breach the obligations set out in paragraph 5 and 6 above, Arbitrator Davie 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.

Later, the Grievor published a book entitled "Out of the Blue" which recounted her struggles with depression and specifically detailed her termination from employment with the Globe and Mail. The book included references to the settlement such as "...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 landed in my account"; and "Even with a vastly swollen bank account...".

The Employer argued that by publicly stating that she received payment from the newspaper, Ms. Wong had disclosed a term of the settlement and therefore breached her obligation under paragraph 6 of the memorandum of agreement to keep the terms of the agreement confidential. The Arbitrator agreed, stating in part:

26 ... There are as many reasons why parties settle grievances as there are interests and objectives at stake in the grievance. The common thread in all settlements however is certainty of result. By entering into minutes of settlement the parties achieve both finality and certainty of result on terms which they have concluded are acceptable to them. By agreeing that the terms of a settlement will not be disclosed the parties ensure that their agreement to settle matters will not be misconstrued by others.

27 I have therefore concluded that the grievor breached the obligation set out in paragraph 6 of the MOA when she disclosed in clear and unambiguous terms that as a result of the settlement she received a payment from the Employer. Payment to her was a term of the settlement. ...

The Arbitrator held that Ms. Wong was a sophisticated and well-informed party to the agreement, and that she knowingly breached paragraph 6 of the agreement. Pursuant to paragraph 8, she was required to pay back to the Employer the entire payment she received from the settlement, and the Arbitrator so ordered.

Non-disclosure clauses are a common feature in settlement agreements, although some people question their utility since it is not realistic to monitor all communications made by a party to the agreement. However this case shows without a doubt that if it can be established that if terms of an agreement are disclosed, contrary to a confidentiality clause, such disclosure is made at the peril of the disclosing party. The case of Jan Wong will serve as an example that failing to respect the terms of an agreement for which one has freely bargained just might leave you empty handed.

The first step is to get yourself a properly-drafted settlement document setting out the terms and conditions for settlement by which the parties will be bound. The lawyers at CCP have a wealth of experience in crafting settlement documents to leave employers satisfied with the certainty of a resolution that protects their interests.



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