

The Verbal And Written Reference: Or, 'You Would Be Lucky To Get This Employee To Work For You!'



We learn by season four of Downton Abbey the importance of the reference letter. Having been dishonourably discharged, Edna re-appears for an interview with Cora and Rose, supported by the glowing reference of Mrs. Hughes that Branson had convinced her to pen. Inveigling her way back into employment, she soon displays her true colours and is scheming and causing strife in the workplace.

The landscape of 1920s aristocracy in England is not the 2010s in Canada. However, even today, there can be little doubt that most employers still depend heavily on references in making hiring decisions.

What has changed over the past century are the considerations behind whether an employer should provide the reference letter. In the 1920s, the calculus was straightforward: if the employee did a good job, you provided a good reference, otherwise, you did not.

In today's legal climate, issues of liability for defamation, privacy breach, and misrepresentation have left many employers forsaking references, verbal and written, in favour of the employment verification letter.

In this paper we ask what is the best practice with respect to issuing references. To answer that question, we consider:

- (1) What potential liabilities does an employer face in refusing to provide a reference?
- (2) What potential liabilities does an employer face in agreeing to provide a reference?
- (3) What is the impact of privacy legislation on an employer's ability to provide references? This paper concludes with our top 10 practical tips for best practices in providing references.

Last Updated: July 21 2014

Article by Richard Press

