

Whitten & Lublin is a team of legal experts who provide practical advice and advocacy for workplace issues.

CONFIDENTIALITY CLAUSES WITH TEETH

It has been said that former employees will whisper rather than scream when they sign a confidentiality provision.

But based on recent cases, it seems that any amount of chatter by former employees about a confidential settlement might make them eat their words.

In 2011, Patrick Snay and his former employer, Miami's Gulliver Preparatory School, reached a monetary resolution of his age discrimination case. As one might expect, the deal was subject to a strict confidentiality provision depriving Snay of the right to discuss the settlement with anyone outside of his spouse and professional advisors.

Unfortunately, once apprised of the agreement, Snay's daughter took to Facebook, bragging in the online forum, "Mama and Papa Snay won the case against Gulliver. Gulliver is now officially paying for my vacation to Europe this summer. SUCK IT."

Naturally, these comments infuriated Gulliver, thus resulting in a series of legal challenges which culminated in the Florida Third District Court of Appeal's 2014 order to repay the entire \$80,000.00 settlement, finding that "Snay violated the agreement by doing exactly what he had promised not to do."

Let's not assume confidentiality provisions are only enforced south of the border, consider the case of Jan Wong, a former Globe and Mail columnist. After negotiating a settlement of her unjust dismissal grievance, Wong published a book, *Out of the Blue*, in which she referred repeatedly to sensitive details about the settlement, stating among other things about her deal with the Globe: "I'd just been paid a pile of money to go away..." and "Two weeks later a big fat check landed in my account."

An arbitrator found in favour of the Globe, ordering Wong to repay the settlement funds. Having challenged that ruling to the Ontario Divisional Court this year, the Court not only rejected Wong's argument that she did not breach the agreement; it ordered her to pay \$30,000 to cover the Globe's legal fees.

These cases not only underscore the importance of carefully drafted confidentiality provisions, but also reinforce the notion that they amount to more than just lip service. One of the major factors influencing the Court's decision in the Wong case was the strength of the confidentiality provision, which expressly required that she pay back the settlement funds if she breached it; without this additional legal language, it is unclear whether the Globe's recovery would have been quite so lucrative.

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CONSULTATIONS

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HR MANAGER'S GUIDE TO INDEPENDENT CONTRACTORS IN THE WORKPLACE



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LATEST NEWS

On October 20th, [Daniel Lublin](#) opined on the CHL hockey players \ \$180M class action suit in a television interview and also for an written article with [CTV News](#). Watch the interview [here](#) and read the article [here](#).

[Daniel](#) made a number of appearances on national news regarding the developing Jian Ghomeshi story. See his interviews with [CTV News here](#) and an article in the [Toronto Star here](#).

On November 5th, [Daniel](#) appeared on CBC News to discuss the 2 Liberal MPs accused of personal misconduct. Watch his interview [here](#).

[Daniel](#) hosted another popular live Q&A discussion for the Globe & Mail on November 13th. See if he answered one of your questions [here](#).

On October 16th, [David Whitten](#) hosted HR Reporter's webinar on How to Get the Best Talent and Keep It: A Guide for Employers. Details on this presentation can be found on HR Reporter's website [here](#).

[David](#) was also asked to discuss the Jian Ghomeshi story. Review some of his interviews and articles below:

- [Toronto Star – October 29th](#)
- [Pulse 980 – October 29th](#)
- [Moose FM 93.5 – October 29th](#)
- [City News – October 30th](#)
- [Precedent Magazine – October 31st](#)

On October 31st, [David](#) opined on the fine line between private and work life. Read the [Globe and Mail article here](#).

Global News interviewed [David](#) on November 5th regarding sexual harassment in the workplace. See what he had to say [here](#).

On November 12th, [Daniel Chodos](#) hosted HR Reporter's webinar on Accommodating Disability in the Workplace: The Trials and Tribulations. Details on this presentation can be found on HR Reporter's website [here](#).

On November 11th, [Jonquille Pak](#) spoke at the Human Resources Professionals Association (HRPA) on the topic of Workplace Discipline and Performance Management. For more information on this presentation, please visit the HRPA's website [here](#).

UPCOMING EVENTS

[Jonquille Pak](#) is presenting another webinar on November 18th for the HRPA entitled, Internships: To Pay or Not to Pay. Learn more [here](#).

On November 21st, [Daniel Chodos](#) will be hosting a webinar for the Human Resources Professionals Association (HRPA) to discuss Drafting Effective Employment Agreements. Sign up [here](#) before its too late!

Save the date! [David Whitten](#) will be speaking about employment agreements at the [Human Resources Professionals Association's](#) Annual Conference taking place in 2015 from Wednesday, January 21 - Friday, January 23 at the Metro Toronto Convention Centre, Toronto, ON. For more information please visit [HRPA's website here](#).

[Read more here](#)

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