Canadian Human Rights Tribunal	CANADA	Tribunal canadien des droits de la personne

BETWEEN:

GROUPE D'AIDE ET D'INFORMATION SUR LE

HARCÈLEMENT SEXUEL AU TRAVAIL DE LA

PROVINCE DE QUÉBEC INC.

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

JEAN BARBE

Respondent

RULING ON THE DISCLOSURE OF THE SETTLEMENT AGREEMENT AND ADDITION OF MME DES ROSIERS AS A PARTY

MEMBER: Anne L. Mactavish 2003 CHRT 15

2003/04/02

[1] The Groupe d'aide et d'information sur le harcèlement sexuel au travail de la province de Québec inc. (Groupe d'aide) filed a complaint alleging that Jean Barbe harassed Mireille Des Rosiers in the course of her employment with Société Radio-Canada. It is alleged that this harassment was based upon Mme Des Rosiers' sex, her race and her national or ethnic origin. Groupe d'aide evidently filed a second complaint on Mme Des Rosiers' behalf, this complaint against her employer, Société Radio-Canada. The complaint against Société Radio-Canada was settled while the matter was before the Canadian Human Rights Commission. The complaint against M. Barbe has now been referred to the Canadian Human Rights Tribunal for hearing.

[2] M. Barbe seeks production of the Minutes of Settlement documenting the settlement between Groupe d'aide and Société Radio-Canada. Groupe d'aide, Radio-Canada and the Commission object to the disclosure of the settlement agreement, submitting that the agreement is privileged, and in any event, is not relevant to any of the matters in issue in the complaint against M. Barbe.

[3] The Commission has also asked that Mme Des Rosiers be added as a complainant in this proceeding.

[4] In a pre-hearing conference call, the Tribunal member assigned to hear this case offered the parties the option of having these motions determined by a different Tribunal member. I assume that this offer was made on the assumption that it could become necessary to review the contents of the settlement agreement. The Commission and Radio-Canada have both asked that the motions be heard by someone other than the member assigned to hear the case. M. Barbe says that this would be acceptable to him if the agreement is to be divulged in order to determine its relevance.

[5] In the circumstances, the motions have been assigned to a different Tribunal member.

I. M. BARBE'S REQUEST FOR PRODUCTION OF THE SETTLEMENT AGREEMENT

[6] M. Barbe's request raises two issues. The first is whether the settlement agreement involving Radio-Canada is relevant to this proceeding. The second is whether the agreement is subject to privilege. I will deal first with the issue of relevance, as if I were to conclude that the agreement is not relevant to this proceeding, it would be unnecessary to deal with the question of privilege.

A. Is the Settlement Agreement Arguably Relevant to the Case Against M. Barbe?

[7] M. Barbe contends that the settlement agreement between Groupe d'aide and Radio-Canada is relevant to issues of both liability and damages. Insofar as liability is concerned, M. Barbe says that both the complaint against Radio-Canada and the complaint against him arise out of the same factual situation in the workplace. M. Barbe was acting in the course of his employment in his dealings with Mme Des Rosiers. M. Barbe believes that the settlement agreement contemplated the withdrawal of the complaint against Radio-Canada *and* the complaint against M. Barbe. The basis for this belief has not, however, been disclosed to the Tribunal.

[8] Having forfeited her rights as against Radio-Canada and M. Barbe, M. Barbe says, Mme Des Rosiers no longer has the right to pursue him in this case. It follows that Groupe d'aide cannot pursue the case on Mme Des Rosiers' behalf, depriving the Tribunal of jurisdiction in relation to this complaint. Any confidentiality provision in the settlement agreement cannot operate to prevent disclosure when disclosure is required to determine if the Tribunal has jurisdiction to hear the case.

[9] Insofar as the question of damages is concerned, M. Barbe says that any monies received by Mme Des Rosiers from Radio-Canada would have to be taken into account by the Tribunal in its assessment of damages against M. Barbe, so as to prevent any double recovery by Mme Des Rosiers.

[10] The Canadian Human Rights Commission submits that the complaint against M. Barbe is separate from the complaint against Radio-Canada. The remedies sought against M. Barbe are distinct from those for which Radio-Canada could be liable. As a result, the settlement with Radio-Canada has no relevance to the case against M. Barbe. The Commission further contends that it does not accord with common sense and fairness that a settlement between Groupe d'aide and Radio-Canada could allow M. Barbe to avoid responsibility.

[11] With respect to the question of damages, the Commission says that the only damages to which Mme Des Rosiers could be entitled are those for which she has not already received compensation. The Commission submits that there is no issue of double recovery in relation to non-pecuniary damages, citing the decision of the Ontario Board of Inquiry in *Ghosh v. Domglas Inc. (No. 2)*, as authority for the proposition that separate awards for non-pecuniary damages may be made against different respondents.

[12] Radio-Canada submits that M. Barbe has failed to show how the agreement is relevant to the issues in this case. According to Radio-Canada, the settlement goes beyond the human rights complaint filed against it, but also resolves litigation involving Mme Des Rosiers, Radio-Canada and Mme Des Rosiers' union.

[13] Questions relating to damages will only arise later in the proceedings, Radio-Canada says, and then only if the complaint against M. Barbe is substantiated. As a result, Radio-Canada submits that the issue of disclosure should be deferred until damages are being addressed.

[14] Groupe d'aide states that the agreement in issue is between Mme Des Rosiers and Radio-Canada. According to Groupe d'aide, separate causes of action have been asserted against Radio-Canada and M. Barbe. As Mme Des Rosiers' employer, Radio-

Canada's liability is for acts of harassment taking place in the workplace, whereas M. Barbe is liable for his own conduct.

[15] Groupe d'aide says that M. Barbe should not be able to rely on the settlement between Mme Des Rosiers and Radio-Canada to let him off the hook. Rather, M. Barbe has to take responsibility for his actions and accept the consequences.

II. ANALYSIS

[16] I am satisfied that the settlement agreement is arguably relevant to issues of both liability and damages. With respect to the issue of liability, the scope of any release that may have been granted by either Groupe d'aide or Mme Des Rosiers seems to me to be potentially relevant to the issue of M. Barbe's liability. Specifically, the question is whether employees, agents or servants of Radio-Canada were released by or on behalf of Mme Des Rosiers or by Groupe d'aide.

[17] Insofar as the question of damages is concerned, I am satisfied that the settlement with Radio-Canada creates the potential for double recovery by Mme Des Rosiers. In both its questionnaire and in its pre-hearing disclosure, the Commission indicates that it may be seeking to recover wages that Mme Des Rosiers may have lost as a consequence of M. Barbe's alleged actions. Clearly, any monies that Mme Des Rosiers may have already received from Radio-Canada on account of lost wages would have to be taken into account in fashioning a remedy against M. Barbe, so as to prevent double recovery.

[18] With respect to the claim for non-pecuniary damages, the question of whether an award of non-pecuniary damages paid by one respondent should be taken into account in granting a similar remedy against a different respondent has arisen in several recent cases. In contrast to the position taken by Commission counsel in this case, the Tribunal's decision in *Woiden et al. v. Lynn* indicates that counsel for the Commission took the opposite position in that case. In *Woiden*, the Commission submitted that any payment on account of non-pecuniary damages by an employer would have to be factored into an award against the harasser himself. The Tribunal's assessment of

damages proceeded on this basis. Similarly, in *Bushey v. Sharma*, the Tribunal noted that such a payment by an employer could be relevant in certain circumstances. As was previously noted, in *Ghosh*, the Ontario Board of Inquiry held that separate awards for non-pecuniary damages may be made against different respondents.

[19] I do not have to determine whether an award of non-pecuniary damages paid by one respondent should be taken into account in granting a similar remedy against a different respondent at this stage in the proceedings. Suffice it to say that I am satisfied that the quantum of any payment made by Radio-Canada to Mme Des Rosiers for her non-pecuniary losses is arguably relevant to the assessment of the claim for non-pecuniary damages being asserted against M. Barbe.

[20] Having concluded that aspects of the settlement agreement relating to the complaint against Radio-Canada are arguably relevant to the claim being asserted against M. Barbe, the issue is then whether the agreement is privileged, and thus protected from disclosure.

A. Is the Settlement Agreement Privileged?

[21] The Commission contends that the settlement was arrived at through the Commission's conciliation process, and is thus privileged. According to the Commission, privilege attaches not just to settlement negotiations, but to the settlement agreement itself. The agreement further contains a confidentiality clause, reflecting the parties' expectation that the agreement would remain private.

[22] The Commission states that the agreement in this case does not fall within one of the recognized exceptions to the settlement privilege. According to the Commission, questions relating to the interpretation of the agreement can only arise as between the parties to the agreement itself, and not in relation to a stranger to the agreement, such as M. Barbe. Further, the hearing of the complaint against M. Barbe does not raise issues relating to the interpretation of the agreement, and does not, therefore, create an exceptional situation.

[23] The Commission further notes that the settlement agreements in issue in *Woiden* and *Bushey* were not arrived at in the course of the Commission's conciliation process, and that these decisions are therefore distinguishable.

[24] Radio-Canada submits that the parties expected that the agreement would remain confidential, primarily to protect the interests of Radio-Canada. If the agreement were disclosed, Radio-Canada says, its rights would be affected. Radio-Canada does not elaborate on what the effect of disclosure would be insofar as Radio-Canada's rights are concerned.

[25] Groupe d'aide has not made any submissions on the issue of privilege.

[26] M. Barbe states that the opposing parties have not satisfied the burden on them to establish that the settlement agreement is indeed privileged. Even if the agreement is privileged, M. Barbe says that the privilege attaching to settlements has its limits, citing the exceptions referred to in Sopinka–. He cites the Tribunal's decision in *Bushey* as authority for the proposition that the privilege relates to settlement negotiations, and not to the settlement agreement. While acknowledging the public policy underlying the principle that settlement negotiations be kept confidential, M. Barbe argues that a party should not be able to rely on a confidentiality provision in a settlement agreement to allow it to pursue a third party, in violation of the terms of the agreement.

[27] M. Barbe submits that the jurisprudence establishes that the privilege can be set aside where it can be shown that the document is arguably relevant to a party's case. He has not, however, cited any authority in support of this contention.

[28] Finally, M. Barbe states that the prejudice to him if the agreement is not disclosed outweighs that which will be suffered by the other parties if the agreement is not kept confidential.

B. Analysis

[29] M. Barbe's request requires me to balance two important and competing policy considerations: that is, the public interest in promoting the settlement of human rights disputes and the fairness requirement that parties to human rights litigation have a full opportunity to advance their positions.

[30] There are two provisions of the *Canadian Human Rights Act* that must be considered in determining how these competing interests are to be resolved. Subsection 47(3) provides that:

> Any information received by a conciliator in the course of attempting to reach a settlement of a complaint is confidential and may not be disclosed except with the consent of the person who gave the information.

Subsection 50 (4) states:

> The member or panel may not admit or accept as evidence anything that would be inadmissible in a court by reason of any privilege under the law of evidence.

[31] I propose to consider first the more general question of whether a settlement agreement is privileged as against a third party in circumstances such as those that arise here. I will then consider the effect of subsection 47(3) of the *Act*, as it relates to settlement agreements arrived at through the Commission conciliation process.

[32] Insofar as the general issue of settlement privilege is concerned, the law is clear that settlement negotiations are subject to privilege, and may only be disclosed in limited circumstances. There is a compelling public policy basis for this rule: parties should be encouraged to try to resolve their differences through negotiation, and should not be inhibited in their efforts by fear that admissions or concessions made in the course of negotiations could be used against them, in the event that the negotiations do not result in the resolution of the dispute.

[33] While the law relating to the privileged nature of settlement *negotiations* is relatively clear, the law relating to concluded settlement *agreements* is less clear. Much of the discussion in the jurisprudence centres around the question of whether settlement

negotiations lose their privileged character when they result in an agreement. Sopinka suggests that where settlement negotiations result in an agreement, evidence with respect to these negotiations may be tendered in proof of the settlement, where the existence or interpretation of the agreement is in issue. As my colleague noted in *Bushey*, the exceptions cited by Sopinka relate to the disclosure of settlement negotiations in specific situations. No explicit reference is made to the issue of the discoverability of settlement agreements, nor does Sopinka suggest that settlement agreements may only be disclosed in exceptional circumstances.

[34] There is no unanimity in the jurisprudence on this point. In *Derco Industries Ltd.* v. *A.R. Grimwood Ltd.*, the British Columbia Supreme Court allowed the disclosure to a plaintiff of settlement documents (including documents relating to the negotiations, as well as the settlement agreement itself) where an agreement had been entered into by several defendants in a construction dispute. In ordering that the documents be disclosed, the Court noted that the balancing of competing interests may differ when the request for disclosure comes from a stranger to the negotiations, whose interests may be affected by the settlement. This decision was subsequently affirmed by the British Columbia Court of Appeal. However, the Court of Appeal expressly declined to offer an opinion on whether a stranger to the negotiations is in a different position to the parties themselves.

[35] The British Columbia Court of Appeal revisited this issue in *Middelkamp* v. *Fraser Valley Real Estate Board*. At issue in *Middelkamp* was the production of documents exchanged during settlement negotiations that had resulted in a consent order being made. In finding that the documents were privileged, and thus not subject to production, the Court reiterated that 'without prejudice' documents communicated in the course of settlement negotiations were subject to a class privilege, whether or not an agreement was reached. In coming to this conclusion, the Court held that *Derco* was wrongly decided. It should be noted, however, that the issue in *Middelkamp* was the discoverability of documents exchanged during settlement negotiations. The discoverability of the settlement agreement itself was not before the Court.

[36] This distinction was noted by the Alberta Court of Queen's Bench in *Ed Miller Sales & Rentals Ltd.* v. *Caterpillar Tractor Co.*, which considered whether a stranger to unsuccessful settlement negotiations could obtain information regarding the negotiations during examinations for discovery. In concluding that a stranger to the negotiations was not entitled to disclosure of the contents of the failed negotiations, the Court distinguished *Derco* on the basis that in *Derco*, there was a concluded settlement.

[37] The British Columbia Court of Appeal recently had cause to consider the issue of the discoverability of a settlement agreement in *British Columbia Children's Hospital* v. *Air Products Canada Ltd.*, a case involving a settlement between a plaintiff and some of the defendants in a multi-party law suit. The Court concluded that its earlier decision in *Middelkamp* was binding authority for the proposition that settlement agreements were privileged, and thus immune from disclosure. Notwithstanding this conclusion, however, it appears that the Court did not consider this privilege to be absolute, as the Court went on to affirm the portion of the Motions Judge's ruling requiring disclosure of any provision in the settlement agreement that could be construed as a release, on the basis that it was potentially relevant to the matters still in issue in the litigation. Thus it appears that disclosure can be ordered in situations where the settlement agreement is potentially relevant to issues still alive in ongoing litigation.

[38] It should be recalled that it is the provisions in the settlement agreement between Groupe D'aide and Radio-Canada that could be construed as a release of M. Barbe that I have found to be arguably relevant to the issue of liability in this case.

[39] The House of Lords considered the discoverability of correspondence leading up to a concluded settlement agreement in *Rush & Tompkins Ltd.* v. *Greater London Council and Another*. The Court concluded that 'without prejudice' correspondence sent in the course of settlement negotiations remain privileged, even if an agreement is concluded. The correspondence was thus inadmissible in subsequent litigation involving the same subject matter, whether it involved the same or different parties. In arriving at this conclusion, the Court noted that allowing admissions made in an effort to effect a compromise to be used in subsequent litigation would serve to discourage efforts to

settle. As a result, the Court concluded that settlement negotiations should not be disclosed, whether or not the negotiations subsequently led to an agreement. Once again, however, the Court was concerned with the production of correspondence leading up to the settlement, as opposed to the settlement agreement itself.

[40] The English Court of Appeal subsequently had occasion to consider the application of the House of Lords' decision in *Rush & Tompkins* to a case where a settlement agreement had been concluded. In *Gnitrow Ltd. v. Cape PLC.*, the Court stayed a claim against a defendant, until such time as the plaintiff disclosed the terms of an agreement entered into between the plaintiff and other parties. Disclosure was required on the grounds that there was a relationship between what the plaintiff was claiming from the defendant, and the monies that the plaintiff had been required to pay to the other parties. In making this order, the Court indicated that each case where access to a settlement agreement was being sought should be considered in light of the specific circumstances in issue.

[41] In this case, I have found that there is a potential relationship between the monies that the complainant or Mme Des Rosiers have received from Radio-Canada and the damages claimed against M. Barbe.

[42] In determining whether a settlement agreement is privileged, and thus exempt from disclosure, it is helpful to keep in mind the public policy reason underlying the recognition of a settlement privilege. As Sopinka noted, in considering the privilege attached to settlement negotiations, "... the exclusionary role (sic) was meant to conceal an offer of settlement only if an attempt was made to establish it as evidence of liability or a weak cause of action, not when it is used for other purposes."

[43] Keeping this principle in mind, it seems that while settlement negotiations are privileged, whether or not an agreement is ultimately reached, the settlement agreement itself is not absolutely privileged, and may be disclosed when it relates to live issues in ongoing litigation. As long as the agreement has potential relevance, other than as an

admission against interest, and is not being used simply to establish one party's liability or the weakness of that party's position, the privilege does not bar production.

[44] Having concluded that the settlement agreement is not subject to an absolute privilege, and may be disclosed when it relates to live issues in ongoing litigation, subsection 50(4) of the *Canadian Human Rights Act* is no longer relevant. What remains to be determined is whether the fact that the agreement was arrived at through the auspices of the Commission's conciliation process affects the discoverability of the agreement.

[45] The only jurisprudence of which I am aware that considers this provision in the legislation is the decision of the Federal Court of Appeal in *Paul*. At issue in *Paul* was the propriety of information relating to failed attempts at conciliation, including an offer of settlement, being provided to the Commissioners of the Canadian Human Rights Commission, for consideration by the Commissioners in deciding how to dispose of the case.

[46] The Court concluded that subsection 47(3) contained an absolute prohibition against the disclosure of any information received by the conciliator. The Court noted that such a prohibition was consistent with the common law settlement privilege relating to settlement negotiations, and was all the more necessary in light of the mandatory nature of Commission conciliation.

[47] As previously noted, *Paul* deals with disclosure of settlement negotiations. The Court was not called upon to determine whether a settlement agreement negotiated through the conciliation process could be disclosed. The Court did note, in passing, that Section 48 of the *Act* requires Commission approval of settlements reached prior to the commencement of hearings. In the Court's view, a request for Commission approval is the consent to disclosure of the terms of the settlement. This *obiter* statement could be interpreted to mean that subsection 47(3) requires that consent be provided for the disclosure of conciliated settlement agreements.

[48] However, regard must be had to the wording of subsection 47(3) itself. The French version of the subsection states that "Les renseignements recueillis par le conciliateur sont confidentiels ...", whereas the English version refers to information received by the conciliator "... in the course of attempting to reach a settlement ...". Thus the English version arguably relates only to communications made during negotiations leading up to a settlement, and not to the settlement agreement itself. Such an interpretation would be consistent with the policy considerations discussed earlier in this ruling, in that any concessions or admissions made by a party to a conciliation could not be used against them, once a settlement was concluded.

[49] For these reasons I am of the view that the settlement agreement is not protected by either a statutory or common law privilege.

C. Should the Agreement be Produced in its Entirety?

[50] Even though I have concluded that the settlement agreement is not protected by either a statutory or common law privilege, it is not disputed that the agreement was entered into by the parties in the expectation that it would remain confidential. In these circumstances, I am of the view that the agreement should not be disclosed beyond what is necessary to ensure M. Barbe the opportunity to mount a full answer and defense to the complaint against him. As a result, I am imposing certain terms on the disclosure.

[51] In order to ensure that the confidentiality of the agreement is not breached more than is absolutely necessary to provide a fair hearing, I am directing the Commission and Groupe d'aide to deliver a copy of the agreement to the Tribunal Registry within five days of this decision, in order that I may review it, and ensure that only the arguably relevant provisions are disclosed to M. Barbe.

[52] What may be arguably relevant at this point will depend on whether the issues of liability and damages are dealt with at the same time. Based upon the information before me, it appears that only a portion of the agreement will likely relate to the issue of liability. Other provisions could be relevant to the assessment of damages. At this point, the issues of liability and damages have not been bifurcated. I propose to review the

document, and release to M. Barbe those portions that are arguably relevant to issues of both liability and damages, unless a request is received from any of the parties for a bifurcation of the hearing. Any such request must be received by the Tribunal within seven days of this decision.

[53] If a request for bifurcation is received, only those provisions of the agreement that are arguably relevant to the issue of liability will be disclosed, pending a determination of the request for bifurcation. In the event that the member assigned to hear this case decides to bifurcate the hearing, provisions of the agreement that are arguably relevant only to the assessment of damages will not be disclosed at this time.

[54] In the event that the complaint against M. Barbe is substantiated, I will review the agreement and direct that those provisions that are arguably relevant to the issue of damages be disclosed.

[55] Any provisions of the settlement agreement disclosed to M. Barbe are disclosed upon the following additional terms:

> i) The agreement shall only be used by M. Barbe and his counsel for the purposes of the hearing into the complaint against M. Barbe; and
>
> ii) No copies are to be made of any of the provisions of the settlement agreement that are disclosed. Within thirty days of the conclusion of the hearing, counsel for M. Barbe shall return any settlement documentation received by him to the Commission, unless an application for judicial review of the Tribunal's decision has been filed.

[56] It should be noted that this decision relates only to the question of the production of the settlement agreement. Its ultimate admissibility will have to be determined by the member hearing the case.

[57] Counsel for Radio-Canada asked that I indicate to the parties that no mention will be made of the terms of the settlement in the Tribunal's decision. It is not up to me to commit the member who will be hearing the merits of this case to say, or not say,

something in his decision. Indeed, it would be highly inappropriate for me to do so. If the parties have any concerns in this regard, they may raise these concerns with the member hearing the case. Similarly, any concerns with respect to sealing the record should be addressed in the course of the hearing.

III. THE ADDITION OF MME DES ROSIERS AS A COMPLAINANT

[58] The Commission has asked that the style of cause in this proceeding be amended to add Mme. Des Rosiers as a complainant. According to the Commission, Mme. Des Rosiers is the person directly aggrieved in this case, and the party to whose benefit any remedies should accrue. The addition of Mme. Des Rosiers as a complainant would avoid any ambiguity in the proceeding, the Commission says, and would not result in any prejudice to the respondent.

[59] M. Barbe objects to the request, submitting that Mme. Des Rosiers no longer has any interest in the case.

[60] I assume that M. Barbe's submission is based upon what he believes is contained in the settlement agreement between Mme. Des Rosiers and Radio-Canada. At this point, however, there is no evidence before me to suggest that Mme. Des Rosiers no longer has an interest in the case.

[61] I am not prepared to grant the Commission's request at this point. This case is somewhat unusual, in that the complaint was filed by an organization on behalf of the individual directly implicated in the case. There is no information before me as to why Mme. Des Rosiers did not file the complaint herself in the first place, and I am thus unable to determine whether it would be appropriate to allow her to join the case at this late date.

[62] The Commission's request also presumes that the Tribunal has the jurisdiction to add a complainant after the case has gone through the Commission process, in such circumstances.

[63] Accordingly, I am adjourning the Commission's request to add Mme. Des Rosiers as a complainant, to be dealt with by the member assigned to hear this case, upon the filing of a more complete evidentiary record.

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Anne L. Mactavish

OTTAWA, Ontario

April 2, 2003

CANADIAN HUMAN RIGHTS TRIBUNAL
COUNSEL OF RECORD

TRIBUNAL FILE NO.:	T736/4102
STYLE OF CAUSE:	Groupe d'aide et d'information sur le harcèlement sexuel au travail de la province de Québec inc. v. Jean Barbe
RULING OF THE TRIBUNAL DATED:	April 2, 2003

APPEARANCES:

Linda Smith	For Groupe d'aide et d'information sur le harcèlement sexuel au travail de la province de Québec inc. and Mireille Des Rosiers
Giacomo Vigna	For the Canadian Human Rights Commission
Katty Duranleau	For Jean Barbe
Thierry Bériault	For Société Radio-Canada

(1992), 17 C.H.R.R. D/216

It should be noted that in an earlier case conference, the Commission indicated that the agreement was entered into by Mme. Des Rosiers, Radio-Canada *and* Groupe d'aide.

(2002) 43 C.H.R.R. D/296

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Sopinka, Lederman and Bryant, The Law of Evidence in Canada, (2d Ed.) at para. 14.220

Ibid.

Subsection 50 (1), *Canadian Human Rights Act*

Sopinka, at paras. 14.201-14.224

Canadian Broadcasting Corporation v. Paul, [2001] F.C.J. No. 542, at para. 26 (C.A.)

[1984] B.C.J. No. 1979

(1992) 71 B.C.L.R. (2d) 276

[1990] A.J. No. 232. Aff'd [1990] A.J. No. 573, [1990] 5 W.W.R. 377

[2003] B.C.J. No. 591

[1988] 3 All E.R. 737

The Federal Court of Appeal came to a similar conclusion in *Bertram* v. *Her Majesty the Queen*, [1996] 1 F.C. 756 (C.A.), stating that there is "no doubt that an exclusionary rule or privilege applies to protect evidence being given of negotiations leading to settlement". Once again, however, the Court's comments related to the negotiations, and not the settlement agreement. The Trial Division of the Federal Court came to a similar conclusion in *Almecon Industries Ltd.* v. *Anchortek Ltd.*, [2000] F.C.J. No. 2008, which dealt with the discoverability of draft minutes of settlement.

[2000] 1 W.L.R. 2327

Sopinka, *supra*., at para. 14.220

Mueller Canada Inc. v. State Contractors Inc., (1989), 71 O.R. (2d) 397. See also *Hudson Bay Mining and Smelting Co. v. Fluor Daniel Wright*, [1997] M.J. No. 398 (Man. Q.B.), at para. 37, and *Western Canadian Place Ltd. v. Con-Force Products Ltd.*, [1998] A.J. No. 1295 (Alta. Q.B.)

In resolving this ambiguity, reference should be had to the admonition of the Supreme Court of Canada in *Ocean Port Hotel Ltd. v. British Columbia*, (2001) 204 D.L.R. (4th) 33, that when confronted with ambiguous legislation, it should be inferred that Parliament's intent was to conform with principles of natural justice (at para. 21).