

Think Twice Before Bashing a Former Employer Online

The Superior Court of Quebec's decision in *Digital Shape Technologies Inc c. Walker*, has held that a non-disparagement clause in a release is not a violation of the freedom of speech guarantees provided by the *Quebec Charter of Human Rights and Freedoms*.

In this case, the former employee signed a release in exchange for a severance payment. The release contained a clause in which the former employee agreed not to "make any negative comments about the company, its management, services, and products, nor do anything that may harm their reputation". Two months after she signed the release, the employee posted a negative review of the company on the website RateMyEmployer.ca. She made a further comment on the website (posting as another user) supporting the comments made in her review.

The company and its president sued the former employee for breach of her obligations of loyalty and the non-disparagement clause in the release. The former employee argued that the non-disparagement clause infringed on her freedom of expression guaranteed by the Charter.

The court did not agree that the clause was void for violation of the Charter and instead found that under certain conditions it is possible to waive a right protected by the Charter. Accordingly, the former employee was permitted to waive her right in the release. The court also found that the clause itself was an extension of the duty of loyalty an employee owes to her employer.

The court found that the comments published by the former employee were negative, derogatory, and even false, and therefore, she was liable for breach of contract. The court awarded damages in the amount of \$11,000.00 to the Company.

We note that this is a decision from Quebec. Accordingly, it remains to be seen how courts in common law jurisdictions would rule on this matter. However, this decision should certainly encourage employers to seek releases from all employees on termination and to ensure any release includes a non-disparagement clause to protect the company's reputation.

As always, we recommend you reach out to e2r® to speak to an Advisor prior to conducting any terminations.

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