

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TELUS COMMUNICATIONS INC.
("Employer")

-and-

TELECOMMUNICATIONS WORKERS UNION
("Union")

Grievance: Robert Varaleau

Adjudicator:

Richard I. Hornung, Q.C.

For the Union:

Morley Shortt, Q.C. - Counsel

Lee Riggs

Lance Trevison

Len Fuss

For the Employer:

Alan J. Hamilton, Q.C. - Counsel

Donald L. Richards

David Thompson

James Nyland

Hearing Date

May 23 & 24, 2007

Location:

Vancouver, British Columbia

AWARD

I

On June 30, 2005, the Grievor, Robert Varaleau, was suspended indefinitely pending the completion of an investigation into his having circulated information via the internet, which was designed - in the Corporation's view - to bring the Corporation and/or its CEO into disrepute.

Following the completion of the investigation, some 10 working days later, the Company imposed a disciplinary suspension of 2 weeks, which equaled the time which the Grievor had been suspended to that point. Mr. Varaleau grieved the suspension.

II

In January, 2004, the Corporation held a sales event at the conclusion of which there was a celebratory function involving senior sales representatives, senior corporate personnel and some non corporate personnel. The sales event was designed to both exhibit the Corporation's confidence and show its gratitude to sales personnel who were embarking on an ambitious project to increase the Corporation's sales on a national basis. The event, to the point of its conclusion, had been deemed very successful.

At the post-dinner entertainment session, selected staff members performed in a program called "*TELUS Idol*". The program essentially involved a parody of the television show "*Canadian Idol*". Members of the Corporation performed and sang using popular tunes, with words that were changed to reflect a TELUS theme. At the conclusion, a panel of judges would comment on their performance. It is apparent that some of the commentary was insensitive and inappropriate and had the prospect of bringing the Company into disrepute. This insensitivity and inappropriateness is apparent from a reading of Ex. 2.3 and 2.4.

Following the sales event, the video clip of the TELUS idol performances was posted on the Corporate web site to be accessed by other employees who were unable to attend the event or by TELUS employees generally.

At some point, relatively soon after the video was posted, a member of the bargaining unit filed a formal complaint indicating that unless a satisfactory resolution was arrived at, a complaint to the Human Rights Commission would follow.

Immediately thereafter, the senior representatives of the Human Resources Department at TELUS reviewed the video clip of TELUS Idol, and removed it from the web site. In order to avoid its further dissemination thereafter, attempts were made to retrieve all of the copies of the media clip as was possible. Furthermore, immediately after the complaint was filed by the employee, (who for the purposes of the application and privacy legislation was referred to as "*John Doe*"), the Union and Management set about addressing the issue of a Respectful Workplace Policy at TELUS and resolving John Doe's complaint in the process. Both the Union and the Employer realized the significance of the problem posed by the TELUS Idol skit and that it was in the best interest of both the Union and the Employer to resolve the issue as quickly and as effectively as possible.

Representatives of the Union and Employer immediately set about fashioning a Respectful Workplace Policy designed to replace a "*hodge podge*" of policies that applied at the time. At the time that the John Doe complaint was lodged, there were at least 3 separate workplace policies on human rights in effect in western Canada. As part of the process in addressing the TELUS Idol issue, the parties reached an agreement on a singular Respectful Workplace Policy that would be in effect and apply across the country. The Respectful Workplace Policy (Ex. 4) was agreed upon on October 22, 2004 and was ultimately inserted into the Collective Agreement as a Letter of Agreement (Ex. 1, p.11).

In addition to completing the Letter of Agreement, the Company and Union also reached a resolution with respect to the John Doe complaint.

It was Mr. Kaltenbach's unchallenged evidence that when the Respectful Workplace Policy was arrived at, there was also an agreement between he and Hope Cumming, a Vice President of the Union who took the point on the negotiations of the Respectful Workplace Policy for the Union, that it would not be in anyone's interest to disseminate any copies of TELUS Idol and that the Union would not comment on the same if invited to do so by the media. It was apparent that neither side endorsed some of the things which were depicted in the video and that the video was not in keeping with the image that either the Company or the Union wanted to portray of the professional nature of TELUS Corporation. This was particularly the case since Telus was on the brink of breaking into Canada's eastern telephone market. Both Ms. Cumming and Mr. Kaltenbach agreed that the Union and Management would work together to find any copies of the videos that might be available throughout the Corporation and destroy copies of it.

The Workplace Policy that was agreed upon involved not only a declaration of principles but also an expensive and deliberate training program, carried out on a "face-to-face" basis across the country. Up until this point, most of the training was done electronically by individual employees simply clicking on their computer and taking the training program in that fashion. The face to face meetings were far more complicated and expensive, from the Company's perspective, in that all bargaining unit employees and all management personnel, up to and including the Board of Directors, were required to attend the Respectful Workplace training. This involved considerable costs in terms of logistics. Individuals would have to take time off work; meetings and venues would have to be arranged; travel and meal costs had to be absorbed. The parties agreed on a significant educational and instructional program which benefitted both management and the Union.

The training program was put in place and it was agreed that it would begin sometime in the fourth quarter of 2004 and be completed by June 2006. As indicated by Ex. 7

(March 31, 2005) & Ex. 8 (May 30, 2005), all employees across the Corporation were provided with information of the same when the program began in earnest.

Mr. Kaltenbach, testified that before the Letter of Agreement of October 22, 2004 was signed by he and Ms. Cumming, a prior draft agreement had been submitted to the Union. The Union's process requires that before any Letter of Agreement, such as Ex. 4, is concluded, it must be approved by the Executive Council of the Union.

Accordingly, when the first attempt at an agreement was put before the Union's Executive Council, it was rejected and then amended. Ultimately, the amendments were incorporated and the new agreement, which is reflected as Ex. 4, was concluded. This observation is made simply to underscore the fact that the Letter of Agreement and the understanding upon which it was reached were formally endorsed by the Union.

The confidentiality which was to surround the TELUS Idol program - and the understanding that was arrived at between the Union and Management with respect to the same - was not shared by all the Union's members.

In approximately June 2005, Management, and Mr. Kaltenbach directly, became aware of discussions regarding TELUS Idol on an employee website called "*Voices For Change*". When he became aware of the same, Mr. Kaltenbach immediately contacted Ms. Cumming, and expressed his concern. They set about attempting to stop the dissemination of the video and information surrounding the performance. As well, Mr. Kaltenbach had TELUS security become involved in order to locate the source of the information that was being disseminated. The Company had a significant concern that information with respect to the TELUS Idol video would be disseminated at the upcoming TELUS Skins Golf Tournament. According to Kaltenbach, he and Ms. Cumming shared the view that if the TELUS Idol information went public it would have a very negative effect on the Company particularly in the extremely competitive market, both in Ontario - where it was fighting for market share - and in Western Canada where it also had significant competency pressures. The view was that the dissemination of the TELUS Idol information would have left the Company, at a minimum, looking unprofessional.

Although cross-examined over the issue to significant extent, Mr. Kaltenbach remained firm in his position that an agreement was reached with the Union that the TELUS Idol video would be kept confidential; that it would not be talked about; and, that both the Union and Management would do whatever they could to keep it “*under wraps*”. Not only did they agree not to talk about it but also to attempt to pull back all of the copies that were available. According to Mr. Kaltenbach, he and Ms. Cumming had an “...*agreement that whenever it (TELUS Idol) came to light we would do whatever we could to stop it*”.

Notwithstanding their efforts in this respect, copies of the TELUS Idol video were nevertheless sent to the President of Toronto Dominion Bank, on which the CEO of TELUS sat as a director.

In about June/July, the relationship between the Company and the Union was, in Mr. Kaltenbach’s words, “*simply terrible*”. By the end of July there was a formal work stoppage. The subsequent labour dispute was protracted and acrimonious. In that milieu, Mr. Varaleau began his campaign to resurrect the TELUS Idol episode. It is clear from a review of Ex. 2 that by June 7, 2005, Mr. Varaleau, working under the alias of “Slammer”, which he agreed was his nickname, began sending messages onto the internet regarding the TELUS Idol video and the impact that the dissemination might have on senior management.

There is no need for me to discuss in detail the entries which are contained in Ex. 2 or the portions of the email transmissions which are disclosed therein. It suffices to say that after careful review of the same, I have reached the conclusion that at the time Mr. Varaleau was involved in the process of dealing with the TELUS Idol video, he was aware that there was an agreement between the Union and Management to keep the video, and the information surrounding it, confidential and knew that the dissemination of the same would be deleterious to the Company. There are excerpts in the documents contained in Ex. 2 which reflect the fact that the parties exchanging information, by way of email, were aware that the *quid pro quo* for the Union’s agreement to remain silent on the issue of TELUS Idol was that a pervasive Respectful

Work Policy would be put in place by Management, replete with an extensive training program.

The Greivor took the position that he was disseminating the information to share opinions in order to create an understanding and evoke discussion.

However, I am satisfied that Mr. Varaleau, in creating his “*media kit*” (Ex. 2.3 and 2.4), did so for the purposes both of resurrecting the TELUS Idol video issue and disseminating it into the public domain in order to bring both the Company and its CEO into disrepute. At a minimum he intended to call into question the personality and character of the Chief Executive Officer of the Corporation and his ability to lead and direct TELUS. Mr. Varaleau’s intentions in disseminating the information are apparent from an email that appears on page 14 of Ex. 2.1 as well as the contents of the media kit (Ex. 2.3 and 2.4), which he disseminated. In his email of June 26, 2005 he states:

“I may be wrong on this but I’m pretty sure that whatever agreement was struck between TELUS and the TWU included not commenting on TELUS Idol. In exchange we get ‘Respectful Workplace Training’”.

Notwithstanding that he understood the agreement that was in place, he disseminated his media kit with the express purpose of it being distributed to media outlets. That fact becomes apparent from a review of an email posted the same date, 3 hours later, wherein he notes:

“I have mailed out a few media kits and I know that the disc is being copied and distributed to various media outlets”.

To underscore his intent, he did not simply re-transmit the video to various individuals, rather, he took selective portions from the video, edited it and added his own comments along with unflattering photos of the CEO of the Corporation for the purposes of making the video and the circumstances around it appear as unflattering and uncomplimentary as possible. His assertion, on p. 5 of Ex. 2.4, that the CEO “*has embarrassed the TELUS brand*” and that employees “*...have no intention of watching it go down the drain under his watch...*” reflect his intention to, *inter alia*, discredit or otherwise embarrass the CEO of the Corporation.

While I can understand some of the frustrations that Mr. Varaleau might have been experiencing during the course of the difficult labour dispute that the parties were involved in, I am nonetheless satisfied he was aware of the agreement, that the video would be kept confidential and compiled and disseminated the “*media kit*” in spite of it in order to negatively impacting the Corporation and/or its CEO.

III

The Union took the position that since the TELUS video was originally put on the TELUS website for dissemination for those people who had not been at the sales conference - and could be accessed by TELUS employees - there was no breach of confidentiality, by the Grievor, since he was simply copying existing TELUS disseminated information. Accordingly, it was the Union’s view that all the Grievor had done was to simply reproduce and re-publish information that was already in the public domain: having been put there by TELUS itself.

The Union’s alternative position is that this case involves the right of freedom of expression contained in the Charter and adopted into arbitral law via common law principles. It asserts that the duty of loyalty and fidelity to the Corporation are supplanted and overwritten by the Grievor’s Charter Rights.

The Employer points out that the Grievor disseminated information which the Union and Management had expressly agreed was in the identified interest of TELUS and the TWU not to be in the public domain (to the extent that either of the parties could prevent it from being there). It notes, as well, that by the time the Grievor began circulating his media kit in June 2006, there was not only an agreement in place (Ex. 4) between the Union and the Employer of which the Grievor was well aware, but the training for the Respectful Workplace Policy was already in effect and being carried out.

The Employer argues that even if the Charter principles apply to the circumstances of this case, it is apparent from a review of the cases, that in applying those principles, a

balance must be struck between an employee's duty of loyalty and fidelity, on the one hand, and his/her right to freedom of expression, on the other. Given the fact that the Grievor was aware that a confidentiality agreement was in place, and given the comments contained in his media kit, the Employer takes the position that the Grievor's actions represented a clear and apparent breach of his duty of fidelity and loyalty to the Employer and that the two week suspension, given the principles contained in *Re: William Scott (1976) BCLRB; Decision No. 46/76*, was not excessive to the extent that I should interfere with the same.

IV

Public Domain

With all due respect, the facts do not support the Union's first argument. I do not agree that the Grievor was merely distributing information already in the public domain. The Grievor did not simply republish the existing TELUS video. What he did, as noted earlier, was: edit it; select the most salacious and negative details; add his comments; and, add a number of unflattering still photographs of the CEO. He did all of this with a view to bringing both the CEO and Corporation in to disrepute.

Freedom of Expression / Duty of Loyalty

There is no need to canvass, at length, the common law duty of loyalty and fidelity. There is longstanding arbitral and judicial precedent that, as an implied term of every employment contract, an employee has a duty of loyalty and fidelity to the Employer. The duty applies, equally, to those employees whose employment is subject to a collective agreement.

The Union argued that, in the circumstances here, the Grievor's Charter right of freedom of expression supplants the duty of loyalty owed to the Employer. While the Charter does not, strictly speaking, apply to private party disputes such as this, the common law should nevertheless, reflect Charter "values". In *Hill v Church of Scientology and Toronto [1995] 2 S.C.R. 1130 at paras. 95-97*, the Supreme Court

stated:

Private parties owe each other no constitutional duties and cannot found their cause of action upon a Charter right. The party challenging the common law cannot allege that the common law violates a Charter right because, quite simply, Charter rights do not exist in the absence of state action. The most that the private litigant can do is argue that the common law is inconsistent with Charter values. It is very important to draw this distinction between Charter rights and Charter values. Care must be taken not to expand the application of the Charter beyond that established by s. 32(1), either by creating new causes of action, or by subjecting all court orders to Charter scrutiny. Therefore, in the context of civil litigation involving only private parties, the Charter will "apply" to the common law only to the extent that the common law is found to be inconsistent with Charter values.

...

When the common law is in conflict with Charter values, how should the competing principles be balanced? In my view, a traditional s. 1 framework for justification is not appropriate. It must be remembered that the Charter "challenge" in a case involving private litigants does not allege the violation of a Charter right. It addresses a conflict between principles. Therefore, the balancing must be more flexible than the traditional s. 1 analysis undertaken in cases involving governmental action cases. Charter values, framed in general terms, should be weighed against the principles which underlie the common law. The Charter values will then provide the guidelines for any modification to the common law which the court feels is necessary.

In *Pepsi-Cola Canada Beverages (West) Ltd. v. Retail, Wholesale and Department Store Union, Local 558*, [2002] 1 S.C.R. 156 (at p.172-173), the Supreme Court endorsed the principle that fundamental values and the Charter be used in developing the common law:

18 The second preliminary issue is how the Charter may affect the development of the common law. Here again the answer seems clear. The Charter constitutionally enshrines essential values and principles widely recognized in Canada, and more generally, within Western democracies. ... The Charter must thus be viewed as one of the guiding instruments in the development of Canadian law.

32 ... The Court, moreover, has repeatedly reaffirmed the importance of freedom of expression. It is the foundation of a democratic society...

*33 Free expression is particularly critical in the labour context. As Cory J. observed for the Court in *U.F.C.W., Local 1518 v. KMart Canada Ltd.*, [1999] 2 S.C.R. 1083, "[f]or employees, freedom of expression becomes not only an important but an essential component of labour relations" (para. 25). The values associated with free expression relate directly to one's work. A person's employment, and the conditions of their workplace, inform one's identity, emotional health, and sense of self-worth...*

36 This said, freedom of expression is not absolute. When the harm of expression outweighs its benefit, the expression may legitimately be curtailed. Thus, s. 2(b) of the Charter is subject to justificative limits under s. 1.

The Supreme Court in *Fraser v. PSSRB (1985) 23 D.L.R. (4th) 122*, set out the guidelines for determining when a government employer is justified in disciplining an employee for public criticism of its policies. The Court recognized that a balance must be struck between the public interest in maintaining a loyal public service and the employee's freedom of expression. In addressing the balance, the court noted that criticism was justified (1) where the government had engaged in illegal acts; (2) or pursued policies that endangered health or safety; (3) or where the criticism had no impact on the public servant's ability to perform his/her duties or the public's perception of that ability. Although the events in *Fraser (supra)* preceded the Charter, the Federal Court of Appeal, in *Haydon v. Canada [2000] F.C.J. No. 1368*, held that the common law duty of loyalty, represents a reasonable limit on the right to freedom of expression under the Charter, provided that the duty was applied in a manner that recognized exceptions similar to those set out in *Fraser (supra)*. In *Haydon (supra)* the court states:

63 At issue is whether the duty of loyalty is a reasonable limit within the meaning of section 1 of the Charter.

...
65 As noted earlier, Fraser v. Public Service Staff Relations Board is the leading case as to the duty of loyalty owed by public servants. The case is significant insofar as it established the bounds of permissible public criticism of government policies by public servants.

...
75 Clearly, the duty of loyalty is a well-known and long-accepted legal principle which provides an intelligible standard by which to measure an employees conduct. ...

...
89 In conclusion, I am of the view that the common law duty of loyalty as articulated in Fraser sufficiently accommodates the freedom of expression as guaranteed by the Charter, and therefore constitutes a reasonable limit within the meaning of section 1 of the Charter.

Accordingly, collective agreements should be interpreted in the context of the values prescribed by the Charter. The common law duty of loyalty survived the Charter and exists as one of the necessary limits which serves to curtail an employee's right to freedom of expression in the employer/employee collective agreement context. Freedom of expression is not an absolute right which supplants the duty of loyalty. Although an employee is entitled to rely on his/her right to freedom of expression, that right - in its application at common law - is not unfettered. The determination of whether freedom of expression prevails over an employee's duty of loyalty to the Employer

depends on the circumstances of each case and a balancing of the interests of both parties to determine which is superior in the circumstances. As pointed out in *Pepsi-Cola (supra)*, when the harm of expression outweighs its benefit, the employees right to freedom of expression may be legitimately curtailed.

Here it was clearly apparent that maintaining confidentiality with respect to the TELUS Idol video was of paramount importance to both the Union and the Employer. The common understanding between them was that any negative reflection on the Corporation, or the CEO, would harm TELUS and, indirectly, the Union's members. To underscore that mutual concern and intent, the Union and the Employer put into place a pervasive Respectful Workplace policy and embarked on a "face-to-face" training process to ensure its implementation.

It is apparent from a review of the documents distributed by him, that the Grievor knew that the *quid pro quo* for keeping the information on TELUS Idol quiet was the implementation of the Respectful Workplace Policy. He knew that the Union benefitted from that implementation and that there was a consensus, at a minimum, that dissemination of information on TEUS Idol would be harmful to the Company. That said, it was Mr. Varaleau's clear intention, by distributing the information, to call into question the reputation of management and specifically the ability of the Corporation's CEO to lead it.

In balancing the respective interests between the Grievor's freedom of speech and the Employer's right to rely on his obligation of loyalty and fidelity, I must - having regard to the comments in *Pepsi-Cola (supra)* - consider whether the harm of expression outweighs its benefit. That is not a difficult task here. Other than providing him with an opportunity to vent his frustrations at the Employer and its CEO in the midst of an acrimonious labour dispute, there is simply no apparent benefit for the Grievor, his fellow employees or the general public, to have the Grievor's media kit disseminated as it was. The ship on Telus Idol had already sailed a year earlier. At the time, both the Union and Employer were concerned about how it might reflect on the Company and

addressed those concerns by reaching an agreement to keep the video confidential and implementing a pervasive policy and costly training program to ensure that similar mistakes would not be made. The Employer, in agreeing to implement the policy and training program, was entitled to expect, in return, that the Union's members would abide by the agreement reached with the Union. More importantly, the Employer was entitled to expect that the Grievor would be prevented, as a consequence of his duty of loyalty and fidelity to his employer, from purposively attempting to harm the Corporation and its CEO. In the circumstances, the harm which the Grievor's comments and media kit were intended to inflict far outweighed any benefit that might be gained from upholding his right to freedom of speech and represented a clear breach of his duty of loyalty and fidelity to the Employer.

A further issue that needs to be addressed, in this respect, is the question of the degree of detrimental impact that an employer must prove in order to justify, on balance, supplanting the employee's right of freedom of expression, with his/her duty of fidelity and loyalty to the employer.

In a recent decision: *Re Overwaitea Food Group Limited Partnership and United Food & Commercial Workers, Local 1518 (2006) 149 L.A.C. (4th) 281*, the board considered a situation where employees of a grocery store had worn buttons asking for support in saving their jobs. There was no evidence that the employer's business interests had in fact been harmed by the action, and the Employer conceded that "*it was a matter of opinion whether the button carried a negative message*" (at p. 296). In balancing the employees' right of freedom of expression with their duty of loyalty to the employer, the arbitrator addressed the issue of whether harm could be inferred in such circumstances. He stated:

A number of different tests have been proposed by Arbitrators over the years in how the balancing should be accomplished. In the recent case between Re: British Columbia Public School Employers' Assn. and B.C.T.F. (2004) 129 L.A.C. (4th) 245, (Munroe), the Arbitrator took a presumptive approach that 'employees should not easily be deprived of a basic right of citizenship....

Of course, it is not unimportant that in that case the School Boards were determined to be a branch of government and, therefore, are subject to the Charter by operation of

section 32, and private business is not. Nevertheless, in the application of Charter values, Arbitrators must go through essentially the same analysis, which requires that they hold the Employer to a reasonably high standard in their search for proof that the exercise of the right of expression by employees on important workplace issues would be detrimental to its business. While I do not say that such proof is necessarily higher than the normal civil standard, the authorities are consistent that it should be compelling. Proof of detriment is a standard measure used in almost all the cases by which to accomplish the balancing of interests.

The central issue in this case is whether evidence of detriment can be inferred. On this issue it is appropriate to observe that authorities are not consistent....The fact is that many Arbitrators in recent times have accepted that in some circumstances detriment can be inferred and that it does not require evidence of actual harm or impairment to the Employer's business." (at pages 289 to 291):

Subsequently, after analyzing the line of cases which hold that proof of *potential* harm to the operations of the employer would be sufficient to swing the balance as required, the Arbitrator, without addressing the interplay between freedom of expression and the common law duty of loyalty and fidelity to ones employer, states as follows:

... on that analysis, it seems to me to be clear that the dividing line between the cases must be seen to be between potential and actual harm. I am not persuaded that it can ever be sufficient that the balance between freedom of expression and protecting the right of the Employer to carry on business be drawn on the basis of potential harm in the sense that it is possible that harm might occur. I think that the overwhelming thrust of the cases is that the right of the employees to express themselves is so fundamental that it can only be overridden by the Employer demonstrating actual harm except that I agree with Counsel for the Employer on the point that it may be entirely appropriate in some circumstances to infer actual harm or to predict actual harm in the future from the actions of the employee. A prediction is to be distinguished from potential harm because in the latter case there is no certainty that harm will occur where as a prediction involves a conclusion that it will. In every case, where the Employer asserts a superior right over an employees freedom of expression, the Arbitrator must be convinced on the available evidence to the Arbitrator that the actions of the employee either had or will result in actual detriment to its business.

While I accept the view that employees ought not to be lightly deprived of their right to free speech, it seems to me that if the stringent "actual damage" principle outlined in *Re Overwaitea, supra*, were to be applied in the circumstances here, the Employer would be put to a test, in balancing common law principles, that would be more in line with (or perhaps exceed) that demanded where the actual Charter applies and section 1 considerations are being weighed. This would, in my view, be inconsistent with the caution expressed by the *Supreme Court of Canada in Hill v. Church of Scientology*,

(*supra*), that :

..the balancing...must be more flexible than the traditional s.1 analysis undertaken in cases involving governmental action cases. Charter values, framed in general terms, should be weighed against the principles which underlie the common law.

In addition, compelling the Employer to prove actual damages in the circumstances here, would serve to diminish the obligation to balance the interests of both parties to determine whose interest is superior in the circumstances. The “interest” that the Grievor hoped to serve by disseminating the TELUS video information was to vent his frustration and anger in a manner calculated to damage the reputation of the Employer. On its face, the harm of expression outweighs its benefit. It would be difficult, if not impossible, for the Employer, in the circumstances here, to prove that the conduct of the Grievor caused actual damage to its operation. Further, to require the Employer to do so here would not fairly address the requirement to strike a balance between the interests at stake.

However, in *Re Overwaitea, supra*, the Arbitrator also acknowledged the following with respect to insulting and derogatory expressions:

... a communication that is inherently disruptive, insulting, derogatory or damaging to the Employer's reputation can be presumed to have a detrimental effect, on the same basis as the law of libel that does not require proof of damage. Damage is inherent in the loss of reputation under the law of defamation (at p. 293).

I find that the information disseminated by the Grievor was meant to be - and was - embarrassing, insulting and derogatory to the CEO and the Employer and as such can be presumed to have a detrimental effect on the reputation of both. Therefore, applying the above principle, proof of damages is not required. While I prefer the line of cases which take the view that it is sufficient for the Employer to provide an Arbitrator with convincing evidence that the actions of the employee provide a *potential* for bringing harm to the operations of the Employer, in view of the above finding, it is not necessary to prefer one formulation over another.

Relying on principles to set out in *William Scott (supra)*, I conclude that discipline of Mr. Varaleau was warranted; and, that the discipline imposed, in all of the circumstances - including his refusal to cooperate in the investigation when the investigatory meeting was first held - warrants a suspension of 2 weeks.

The grievance is dismissed.

July 9, 2007

Richard I. Hornung, Q.C.
Arbitrator