



# CONFIDENTIALITY—THE COLIN CRAIG EFFECT

A recent significant award made by the Human Rights Tribunal makes a complaint to the Tribunal an attractive option for those aggrieved by a breach of confidentiality, says Paul Robertson. He explains why great care should be taken to ensure just who is bound by any obligation of confidentiality.

## CONSERVATIVE PARTY

founder Colin Craig has recently been in the news because of the successful defamation claim against him by Mr Jordan Williams. On 3 October 2016, the Human Rights Review Tribunal lifted a non-publication order in relation to a claim against Mr Craig by a former employee, Rachel MacGregor.

The decision illustrates the difficulty of ensuring confidentiality following a settlement, and in taking action when a party breaches confidentiality.

## THE FACTS

As reported in the popular press, Ms MacGregor alleged that she had been sexually harassed by Mr Craig and lodged a complaint with the Human Rights Commission. The parties attended a mediation. A settlement was reached which required the parties to keep the harassment and terms of settlement confidential.

A few weeks after the settlement, Mr Craig went public about the allegations of sexual harassment. Ms MacGregor sought compensation for this

breach of the settlement in the Human Rights Review Tribunal. In his defence, Mr Craig said that he had publicly discussed the sexual harassment because he believed that Ms MacGregor had already leaked details of the allegations to a blogger, Cameron Slater, publisher of the Whaleoil blog. The leaked documents included poems Mr Craig had composed for Ms MacGregor.

Mr Craig was mistaken; Mr Jordan Williams, a solicitor and confidant of Ms MacGregor had provided the poems to Mr Slater.

Mr Williams did not attend the Human Rights Commission mediation and was not subject to the confidentiality requirements. The Tribunal concluded that he was not subject to any constraints and was, for this reason, able to leak the poems and related information to Mr Slater.

## MISREPRESENTATIONS?

Mr Craig argued that he had settled the claim on the understanding that Ms MacGregor had not discussed the allegations of harassment with any person who might not maintain confidential-

ity, and that Ms MacGregor had the power to preserve the confidentiality of the information. For this reason he had “cancelled” the settlement agreement and sued for the return of the money paid at the mediation.

This claim failed on its facts; the Tribunal accepted that there was no representation of this sort made, Ms MacGregor had not been questioned about who else knew about her allegations, and she had not misrepresented her ability to bind them to the settlement.

## WHAT SETTLED?

The final issue was whether the settlement included both complaints to the Commission and unresolved financial dealings between Ms MacGregor and Mr Craig. Mr Craig said that, because the agreement did not specifically refer to the financial dealings, the settlement left those claims unresolved.

This claim also failed on the facts. This is because both parties accepted that there could be no settlement unless the financial issues and the sexual harassment claim were resolved in tandem.

## OUTCOME AND LESSONS

Ms MacGregor was awarded over \$128,780 for the upset she had suffered, lost salary and the costs that she had incurred.

Great care should be taken when settling claims to ensure it is clear what claim/claims are being settled and who is bound by any obligation of confidentiality.

The significant award made by the Tribunal makes a complaint to the Tribunal an attractive option for those aggrieved by a breach of confidentiality. For example, a record of settlement that has not been signed off by a mediator is difficult to enforce in the Employment Relations Authority or elsewhere. However, if an employee discusses the terms of a confidential settlement, that can be viewed as a breach of the Privacy Act which could ultimately lead to a substantial award of compensation in the Tribunal.

## MacGregor v Craig [2016] NZHRRT 6

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