
Politics unsettles libel settlement

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issue off the agenda

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Political expediency explains the announcement yesterday that Stockwell Day, the Canadian Alliance leader, does not object to releasing the financial details of the out-of-court settlement reached in the libel suit launched against him by Lorne Goddard, a Red Deer lawyer. Now, if Mr. Goddard also agrees, the news will be out next week. Because Mr. Day was insured by Alberta's Risk Management Fund, public money was committed to the settlement. This encouraged opposition parties to demand the details be published.

With a provincial election planned for this spring, the Alberta government did not want to hand the opposition an issue. And it would be hard for Mr. Day to do his job as leader of a federal party with critics constantly pointing to the leftovers from his career in provincial politics. Nonetheless, there are issues in this case that cry out for further consideration.

Negotiated settlements in defamation suits are almost always confidential for the excellent reason that confidentiality encourages compromise. One or both parties may oppose disclosure, albeit for different reasons. And confidentiality is not just limited to libel suits; it is common in negotiated settlements of all types, including actions in tort, wrongful dismissal and breach of contract.

Confidentiality also is in the public interest because it encourages parties to reach voluntary agreements with each other. Protracted litigation is generally to be avoided because it imposes heavy expenses upon the court system as well as upon the parties. It also generates an intangible cost of enmity that should be avoided if possible for the sake of social civility.

The involvement of public money does not *ipso facto* nullify these considerations. Governments keep much financial information confidential, including the salaries of individual employees as well as the details of negotiated settlements in all sorts of civil litigation. To demand that all these agreements be made public whenever public money is involved would seriously jeopardize the conduct of public business.

Another important factor here is retroactivity. It is in general highly undesirable to barge in and upset private agreements that have been reached in good faith. Mr. Day and Mr. Goddard negotiated a settlement with one or the other (perhaps both) assuming and desiring that the details would be held in confidence. Without that belief, there

might not have been a settlement at all in this case, and the parties might still be in court. That might serve the political interests of the federal and provincial Liberal parties, but it does not serve the public's interest in reducing the volume and venom of litigation. Negotiated settlements will become far less frequent if parties in conflict reckon that whatever agreement they reach can be reopened after the fact.

To return to the political realm, Mr. Day and the Alberta government no doubt hope their willingness to release information will get this troublesome issue off the political agenda, but they should not be too confident. Their candour will only embolden their critics. Once the details are out, a clamour will certainly arise for Mr. Day to pay all or part of the cost. Regardless of whether or not he finds it politically expedient to do so, that again raises the question of retroactivity. Should someone who made a voluntary agreement after being told he was insured by the Risk Management Fund now have to raise the money himself? Would he have negotiated the settlement under those conditions?

It is also said that the Risk Management Fund should not have insured

PROTRACTED LITIGATION

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Mr. Day because when he wrote his allegedly libelous letter he was not acting in his capacity as an elected member of the legislature. In his review of procedure, the Alberta Ethics Commissioner expressed puzzlement over this issue and called for it to be settled in court when the case came to trial. A group of Calgary lawyers with Liberal connections is said to be planning a court challenge to the negotiated settlement precisely on the grounds that Mr. Day was acting outside his role as a legislator when he wrote the letter. Yet, interesting and important as this question is, pursuing it leads to the regrettable conclusion that a negotiated settlement is impossible, that the parties must litigate to the bitter end, even if they don't want to, in order that a judge can answer the question.

Mr. Day and the Alberta government made a major concession yesterday, but that will not be the end of the affair. At some point they will have to take a principled stand against retroactivity, breach of confidence, and third-party interference. Repeated resort to expediency will rob them of all credibility.

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