

2019 CarswellNS 509  
Nova Scotia Arbitration

Acadia University and AUFA (Mehta), Re

2019 CarswellNS 509, 140 C.L.A.S. 58

## Acadia University and The Acadia University Faculty Association

William Kaplan Member

Judgment: May 24, 2019

Docket: None given

Counsel: Jack Graham, Q.C., McInnes Cooper, for University  
Ron Pink, Q.C., Pink Larkin, for Association

Subject: Public; Labour

### Related Abridgment Classifications

Labour and employment law

I Labour law

I.1 Labour relations boards

I.1.c Powers

I.1.c.xi Settlements

### Headnote

Labour and employment law --- Labour law — Labour relations boards — Powers — Settlements

### *William Kaplan Member:*

#### Introduction

1 This case concerns the alleged breach of certain provisions of Minutes of Settlement (hereafter “the Minutes”) entered into by the parties on April 1, 2019. Some brief background is in order.

2 Dr. Rick Mehta, a tenured professor, was terminated by Acadia University for cause on August 31, 2018. It is not necessary in this award to set out the - disputed - cause allegations. Suffice it to say that much of the factual background was extensively reviewed, among other places, in a May 15, 2018 independent report prepared by Dr. Wayne McKay titled *A Third-Party Investigation Into, and Report on, the Campus and Social Medial Activities of Dr. Rick Mehta Professor of Psychology at Acadia University*. The Association filed grievances contesting Dr. Mehta’s termination. Certain procedural issues were addressed at a case management meeting held in Halifax on January 11, 2019. Twenty arbitration dates were scheduled. However, a voluntary mediation, also convened in Halifax, took place on April 1, 2019. Not only were Faculty Association and CAUT counsel present, so too was Dr. Mehta’s personal attorney.

3 Following lengthy discussions, the Minutes were voluntarily executed by Acadia, the Faculty Association, and Dr.

Mehta. They clearly provided that the grievances were resolved “without any admission of liability or culpability by any of the parties.” Moreover, the parties, including of course Dr. Mehta who signed the Minutes, agreed “to keep the terms of these Minutes strictly confidential except as required by law or to receive legal or financial advice.” The Minutes contained the following undertaking: “If asked, the parties will indicate that the matters in dispute proceeded to mediation and were resolved, and they will confine their remarks to this statement. Stated somewhat differently, it is an absolute condition of these Minutes that no term of these Minutes will be publicly disclosed.”

4 One of the terms of the Minutes provided for the payment of a specified amount. As is set out below, Dr. Mehta disclosed that the Minutes provided for a payment (although he mischaracterized the payment as “severance”). He also, again as is set out below, breached the provision requiring all of the parties to be specifically circumspect in what they said about the resolution of the matters in dispute. These breaches began almost immediately following the execution of the Minutes.

5 First, Dr. Mehta posted the following on Twitter: “Vindicated former professor! Advocate for free speech and institutional transparency in universities.” One of Dr. Mehta’s followers tweeted “congrats Rick! Hope you got a nice sum monz.” Dr. Mehta responded as follows: “All I will say is that I left with a big grin on my face.” On April 12, 2019, Dr. Mehta tweeted: “Because I got the vindication that I was seeking. In other words, I have left the university on my term, as opposed to the administration’s or union’s terms. The NDA that I was required to sign by law is not for my protection.” It is a matter of record that Dr. Mehta was immediately advised by Faculty Association counsel to remove his online references to having been vindicated. He did not do so. The matter then proceeded to a conference call hearing on May 1, 2019. Both parties made submissions and the following direction was issued:

Professor Mehta is to immediately delete from his Twitter account the reference to him as a “vindicated former professor!” along with the words “I got the vindication I was seeking. In other words, I have left the university on my term as opposed to the administration’s or union’s terms. The NDA that I was required to sign by law is not for my protection” and he is to refrain from using such terms in the future. Put another way, he is to strictly comply with the Minutes of Settlement about what he can, and cannot say, about the resolution of this matter.

6 The direction also provided for the parties to make written submissions and, as noted above, the dispute proceeded to hearing by conference call on May 22, 2019.

7 In the meantime, and also following the issue of the direction, further tweets were posted. Dr. Mehta tweeted: “University administrators are ruthless towards non-leftist profs who exercise their rights to academic freedom & dissent. They also have labour law on their side that allows them to fire tenured profs without cause and to weasel their way out of paying any kind of severance” and “You dismissed me for exercising my rights to academic freedom and dissent. Now you are withholding my severance pay...” Numerous other tweets also made reference to his “severance pay.” Around May 7, 2019, Dr. Mehta advised that he deleted the tweets that referred to him having been “vindicated.” References to his “severance pay,” however, continued. Moreover, in a letter to the President of Acadia University dated May 8, 2019, Dr. Mehta threatened to release the Minutes to the media unless certain conditions were met.

8 It is quite clear from the tweets extracted above that Dr. Mehta has breached the Minutes. The Minutes were categorical that there was no admission of liability or culpability by any of the parties, and no basis, therefore, for Dr. Mehta to claim vindication. Indeed, it would be wildly inaccurate to say that agreement on the Minutes constituted vindication. It is actually untrue to say that the parties agreed that Dr. Mehta was dismissed without cause, that he left the University on his own terms, that he was terminated for exercising his academic freedom and that he was owed severance pay. None of these issues were ever determined one way or the other. Moreover, the parties to the Minutes, including Dr. Mehta, agreed to say nothing about the contents of the Minutes other than that the matters in dispute were resolved. They promised to confine their remarks to that statement. There was no “severance pay” in the Minutes, but there was provision for payment of a relatively modest amount. By referring to vindication and by repeatedly referring to a payment provision (and severance pay), Dr. Mehta violated the Minutes. The only question is the consequence of these multiple breaches.

### **Position of the Parties**

9 The University takes the primary position — and numerous authorities were filed in support — that it should not be

required to make any without prejudice payment to Dr. Mehta because of his repeated breaches of the Minutes. The Association takes no position.

### Decision

10 As already indicated, the evidence establishes that Dr. Mehta is in breach of the Minutes. As is specifically provided in the Minutes, I remain seized with respect to their implementation and any allegation of breach. The parties specifically conferred upon me the jurisdiction to fashion an appropriate remedy if a breach was established, including directing repayment of settlement funds.

11 It is noteworthy that all of the provisions of the Minutes were carefully and comprehensively reviewed with Dr. Mehta by Association counsel, CAUT counsel and his personal attorney prior to Dr. Mehta signing them. Moreover, as Dr. Mehta is aware, following extensive discussion, the Minutes were carefully calibrated to restrict, as much as possible, limitations on what the parties could say. Put another way, and by deliberate design, Dr. Mehta's academic freedom remained virtually unfettered: Dr. Mehta could not disclose any of the terms of the Minutes, including the payment provision, and could only say that the matters had been resolved. Otherwise he was completely free to speak and write about his experiences at Acadia University. Nevertheless, his tweets provide ample evidence of repeated breaches even after he was directed to cease.

12 Simply put, there was no ambiguity in the Minutes themselves, or in the discussion that preceded their signing, about the obligations that followed. There was no admission of liability or culpability by anyone; indeed, the parties were firmly fixed in their views. But they decided, nevertheless, to settle the matters in dispute provided the terms of the settlement were kept confidential. Quite clearly Dr. Mehta is attempting to suggest by use of the term vindicated and by his repeated reference to "severance" that there was some kind of an acknowledgment of University wrongdoing when that was specifically not the case (and likewise, there was no finding of wrongdoing by Dr. Mehta). Nevertheless, Dr. Mehta repeatedly broke his promise of confidentiality and to limit his comments about how this matter was resolved. Indeed, the tweets and correspondence continue. Settlements in labour law are sacrosanct and given the repeated and continuing breaches, together with the absence of any mitigating circumstance or explanation, I find that the University is no longer required to honour the payment provision.

13 Lastly it should be noted that, at the telephone conference hearing held on May 22, 2019, the University raised the question of whether it should be required to honour the provisions in the agreement dealing with Dr. Mehta's access to facilities, based on the breaches set out above and other concerns about faculty and student safety and security. I am not prepared to rule on this issue at the present time; however, to the extent that those concerns continue, either party is entitled to bring this matter back before me for consideration.

### Conclusion

14 Accordingly, and for the foregoing reasons, the University is no longer required to honour the payment provision in the Minutes. I continue to remain seized with respect to other aspects of those Minutes should either party allege a breach.