

BLACKLISTING LIARS, LOSERS, AND MISFITS

According to the Globe & Mail, employers and recruiters are assembling a “blacklist” of people considered unfit for hiring. Apparently, if you are a liar, a loser, or a misfit then the chances are good that your name will end up on such a list.

Joann Lublin, in her article, “Blacklisted: One mistake can land you on a do-not-hire list” addresses the “unofficial” practice of listing “undesirable applicants”. Unbeknownst to the individual, his or her job prospects are curtailed by the fact of having been labeled as an undesirable.

It seems that the practice of accumulating a list of “do-not-hires” is fairly widespread. One recruiter, mentioned in Lublin’s article, claimed that *every* headhunter and employer he surveyed on the topic admitted to keeping a so-called blacklist.

The fact that recruiting firms (a.k.a. headhunters) and human resources departments keep such lists is perhaps not surprising. To some extent, after all, their job is to weed out undesirables or, as Lublin calls them, “liars, losers and misfits”.

Once an employer or a recruiter has identified an individual as unattractive for some reason or another, it makes some organizational sense to make note of that name. This prevents the inadvertent hiring of that same individual at some point in the future.

But if there’s one thing we, as a society, seem obsessed about right now it’s the existence of secret lists containing our information. And, no doubt, many people will be disturbed by the revelation that hiring blacklists are out there and will never, ever be offered for public viewing.

The existence of such lists will surely be a cause for concern for some people. According to Lublin’s article, it doesn’t take a whole lot to get on the list.

Is there anything, legally-speaking, a person can do in response to such blacklisting? The first hurdle, of course, is simply uncovering that you’ve “made” a list.

Assuming there is some evidence that someone has blacklisted you there are, in theory at least, some legal avenues for redress.

The first thing that jumps to mind is the range of so-called “privacy” or personal information statutes. Those, such as B.C.’s *Personal Information Protection Act*, provide individuals with legal mechanisms to gain access to their personal information being held by an organization.

But does someone else’s opinion of your fitness for hiring qualify as *your* personal information? My own sense is that it does not, but that shouldn’t stop

you from trying to make use of the statutory disclosure mechanisms to find out what is being said about you.

Another legal avenue is the civil law of libel and slander. If information about you which you consider defamatory has been published in some manner – say, from recruiting agency to employer – there is the potential of obtaining damages. An even more effective remedy might be an injunction preventing further distribution of the information.

However, truth is a full defence to an allegation of defamation. So, I suppose *actual* liars, losers and misfits need not bother suing (“Your honour, I submit for the consideration of this esteemed Court that Mr. Jones has, in fact, demonstrated himself to be a *misfit!*”).

If the reasons for blacklisting relate to protected grounds set out in human rights legislation – B.C.’s *Human Rights Code*, for instance – then there may be a discrimination complaint waiting to be filed. If, for instance, the reason for your name appearing on a do-not-hire list arises out of a physical or mental disability, then a human rights complaint would be the route to follow.

Realistically, the best approach may be to avoid getting on a blacklist at all. A reading of Lublin’s article indicates that shouldn’t be all that difficult of a task for most people.

Some of the common mistakes made by applicants seem to include exaggerating their experience and qualifications, exhibiting poor presentation skills, having the temerity to make a counter-offer to an employer, playing one headhunter off against another, and reacting flippantly to interview questions about serious subjects such as drug abuse.

These are pitfalls that any career consultant can help the average applicant avoid. It’s better, I’d say, to take such preventative measures than to end up on someone’s secret list of liars, losers and misfits.

Robert Smithson is a lawyer in Kelowna practicing exclusively in the area of labour and employment law. For more information about his practice, or to view past “Legal Ease” columns, log onto www.pushormitchell.com. This subject matter is provided for general informational purposes only and is not intended to be relied upon as legal advice.