



Reality TV Publicity For Your Business Venture? Beware the Release You Are Required to Sign

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It is tempting for a small business to sign up to be on a reality TV competition.

The free publicity and exposure may be a great way to broadcast a fledgling idea to a wide audience. If she's lucky, an entrepreneur's appearance will draw interest, awareness and maybe even some investment in her company.

But the allure of stardom and publicity can easily lead to a business biting off more than it can chew. And, in the recent case of a startup's appearance on CBC's reality competition, *Dragons' Den*, one entrepreneur certainly did not get what he thought he had bargained for.

It all started simply enough when Montreal lawyer Marc Ribeiro signed up to appear on CBC's *Dragons' Den* to pitch a board game that he and his company had created.

CBC drafted a comprehensive release for Mr. Ribeiro and his company to sign before appearing on its show. Like most releases for appearances on reality TV, the CBC contract stated:

"I understand that ... my appearance, depiction and/or portrayal in the Program may be disparaging, defamatory, embarrassing or of an otherwise unfavourable nature which may expose me to public ridicule, humiliation or condemnation ... [and that the] Producer shall have the right to ... include any ... appearances, depictions or portrayals in the Program as edited by [the] Producer in its sole discretion ... I ... agree that I will not sue ... for any damage, loss or harm to me or my property howsoever caused, resulting or arising out of or in connection with ... participation and appearance in or elimination from the Program ..."

Shows like *Dragons' Den* *do* open up opportunities for free publicity for businesses seeking a large audience. But this can come at a cost. Signing a release like the one that Ribeiro signed opens up the possibility of being humiliated on TV in front of that same large audience, with no recourse, since the right to sue has been signed away.

When Ribeiro's episode of *Dragons' Den* ultimately aired, a voice-over introduced his segment in a manner that Ribeiro would later contend had conveyed his board game business proposal as a "complete flop."

"The dragons never pull punches when they spot a money-losing venture," the segment began. "Unfortunately, these next few ideas hit the mat immediately."

Despite the comprehensive release he had signed when auditioning, Ribeiro and his company sued the CBC for gross and reckless negligence, intentional misconduct, malice and bad faith over the introductory voice-over and how his segment was edited. He argued that the CBC owed him and his company a stand-alone duty of good faith that was independent of the terms expressed in the release.

In the Ontario Superior Court of Justice, CBC's motion for a summary judgment dismissing Ribeiro's claim was granted. Ribeiro appealed.

The Ontario Court of Appeal, however, sided with the CBC. Participants in reality TV who sign waivers and take risks open themselves up to being portrayed however the show sees fit, often times in a negative way, since reality TV "drama" looks to provide entertaining viewing rather than public education.

The release Ribeiro had signed, said the court, gave the CBC sole discretion to edit the show however it wanted. The CBC had Ribeiro's permission from the release to portray Ribeiro and his company in any manner it chose – in a factual, fictional or even defamatory one. Therefore, the CBC had no contractual duty to edit the broadcast in a manner favourable to Ribeiro.

The business impact of an embarrassing reality TV show appearance can be severe. This is not to say, however, that taking the risk of dabbling in reality TV will always end in disaster or humiliation.

What *does* matter is the substance of the release that the show requires participants to sign. And, as this case indicates, a careful review the contract and a full understanding of its terms before taking the plunge into reality TV stardom, or notoriety, are a must. ■



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