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Essential Conditions and Settlement Agreements: A Reminder of the Requirements for Forming a Binding Settlement Contract

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Out-of-court settlements are often negotiated under time pressure, sometimes on the eve of a hearing, and frequently through nothing more than email exchanges between lawyers. While this is common practice, it carries a very real risk for the parties, namely, entering into a legally binding settlement before any formal agreement is signed.

In *Groupe Capital Alternatif inc. c. Tessier*¹, the Court of Appeal of Quebec upheld the Superior Court of Quebec's decision², reaffirming a fundamental principle regarding settlements, which is often tested in practice: consent is assessed at the moment an offer is accepted, based on the essential terms of the contract expressed at that time, not on requirements or assumptions that were never framed as determinative when the offer was accepted. Echoing the lower court's reasoning, the decision reminds us that a party cannot accept a settlement and later claim that its consent depended on factors that were never identified as essential conditions at the time of acceptance of the settlement offer.

Facts of the case

Two employees, Samuel Tessier and Alex Côté (the "**Employees**"), were dismissed by their employer, Groupe Capital Alternatifs Inc. ("**ACG**"), on September 10, 2018. They filed a claim with the *Tribunal administratif du travail* ("**TAT**"), which ruled in their favour on March 29, 2022 and revoked their dismissals. However, the TAT declined to order their reinstatement and reserved its jurisdiction on remedies. A request for review was dismissed in 2023³.

¹ 2026 QCCA 548

² 2025 QCCS 4418

³ *Id.*, par.1

At the same time, ACG took several legal actions against the Employees and their new employer, Echelon Wealth Partners Inc., including a lawsuit seeking over \$1 million in damages and an application for judicial review before the Superior Court⁴.

As the TAT hearing on remedies was scheduled for June 12 and 13, 2024, counsel for both sides entered into settlement discussions in the preceding week⁵. On June 11, 2024, the day before the hearing, counsel for the CNESST sent a final counteroffer by email, describing it as containing “each and every essential element” of the settlement⁶. The offer included, notably, payments of \$65,000 to each employee, full and final releases in settlement of all disputes, together with obligations of confidentiality and non-disparagement. The breakdown of the payment specified that part of it would be reimbursement for legal fees “upon presentation of receipts,” with the balance paid as a retirement allowance. Less than an hour later, ACG’s lawyers confirmed by email that they had instructions to accept the counteroffer⁷. The TAT hearing was then cancelled.

Problems arose, however, when drafting the *Settlement agreement and release*⁸ document. ACG required detailed proof showing that the Employees personally paid all legal fees being claimed, including the payment method and various supporting documents⁹. Taking the position that the documents provided were insufficient, ACG refused to sign the *Settlement agreement and Release*¹⁰. Faced with a deadlock, the Employees and the CNESST applied to the Superior Court to have the agreement reached on June 11, 2024, homologated¹¹.

The Superior Court

At first glance, ACG’s position might seem like an attempt to introduce an accessory condition relating to supporting documentation. In this perspective, the receipt requirement was intended to confirm that the legal fees claimed had been incurred and paid by the Employees themselves, rather than by Echelon, with whom ACG remains in litigation.

The Court rather suggested that ACG was trying, after the fact, to impose requirements that had never been raised during negotiations, effectively transforming an agreed-upon term into a set of new conditions¹². In practical terms, ACG was attempting to make the execution of the agreement subject to essential conditions that had never been discussed or accepted.

The Court emphasized that the drafting of a formal Settlement Agreement and Release does not provide an opportunity to fully renegotiate the agreement but rather serves to record the terms already agreed upon and to facilitate their implementation¹³. The essential elements of the contract are those agreed upon when consent was exchanged, not those a party later wishes to add.

⁴ *Id.*, par. 2-5

⁵ *Id.*, par. 10

⁶ *Id.*, par. 15-16

⁷ *Id.*, par. 17

⁸ A settlement is a contract by which parties resolve a dispute through mutual concessions. The document itself may be referred to simply as a settlement agreement, a release and settlement, or a settlement agreement and release. The terminology will vary depending on the context and level of formality, but all refer to the same type of legal instrument intended to formalize and secure an out-of-court resolution.

⁹ *Id.*, par. 21-23

¹⁰ *Id.*, par. 25-26

¹¹ *Id.*, par. 27

¹² *Id.*, par. 49

¹³ *Id.*, par. 39-40

A key aspect of the ruling was that the conditions ACG sought to impose had never been raised or presented as essential to its consent. The Court noted that if those factors had truly been essential, ACG needed to raise them before accepting the global offer¹⁴. Failure or omission to verify these elements at that stage cannot subsequently be remedied by imposing new substantive requirements during the drafting of the formal document embodying the agreed contract¹⁵.

The decision highlights an important distinction between accessory modalities of execution, and essential terms of an agreement. While the former may be further specified in the written settlement, the latter must necessarily form part of the parties' initial agreement. Failing that, they cannot be imposed unilaterally after acceptance.

Court of Appeal of Quebec

Following the Superior Court's homologation of the agreement, the Quebec Court of Appeal¹⁶ dismissed ACG's appeal and upheld the lower court's judgment. The Court of Appeal endorsed the first instance judge's conclusion that ACG had attempted to introduce, at the *Settlement Agreement and Release* drafting stage, essential requirements that had never been discussed during negotiations. The Court of Appeal¹⁷ confirmed that the Superior Court properly homologated the settlement as accepted on June 11, 2024, and found that ACG's allegations presented no reviewable error.

Practical takeaways

In practice, this Court of Appeal decision serves as a clear warning to lawyers advising clients during settlement negotiations that accepting an offer should never be taken lightly. Once an agreement is reached, a party's flexibility to add conditions becomes significantly limited. The courts prioritize contractual certainty and will readily homologate a settlement where the essential terms have been clearly agreed upon, even if no formal agreement has been signed.

In out-of-court settlements, it is essential to remember that the time to set out essential conditions, to request clarifications, to demand proof, but also to confirm the elements that are critical to one's consent is before accepting the offer, not after. Any attempt to make one's consent conditional on factors that were never discussed during negotiations is, in light of these decisions, bound to fail.

The information and commentary set forth herein are for the general information of the reader and are not intended as legal advice or as an opinion to be relied upon in relation to any particular circumstances.

¹⁴ *Id.*, par. 49

¹⁵ *Id.*, par. 66-68

¹⁶ 2026 QCCA 548

¹⁷ *Id.*, par. 6-7.