

News / GTA

## Jian Ghomeshi's other case: the union grievance

While Jian Ghomeshi's criminal case proceeds, he's also got a union grievance against the CBC - but the union doesn't have to back him.



DALE BRAZAO / TORONTO STAR

Jian Ghomeshi emerges from his lawyer's office on King St. after appearing in court on sex assault charges Wednesday.

By: **Marco Chown Oved** Staff Reporter, Published on Thu Nov 27 2014

Now that Jian Ghomeshi is out on \$100,000 bail, his path through the criminal justice system is well understood: pretrial and maybe trial, possibly a plea and, if not, a verdict.

No matter what happens in court, Ghomeshi will still have an opportunity to make the case that he was wrongfully dismissed by the CBC through a union grievance.

But it remains unclear whether the union will support his bid.

When Ghomeshi filed a \$55-million lawsuit last month, several labour lawyers publicly pointed out that as an employee in a unionized workplace, he did not have the right to sue without first going through the grievance process.

Earlier this week, Ghomeshi dropped his lawsuit and his union confirmed that he had requested it grieve his firing.

"The grievance that was filed ... will proceed through the usual process. This includes discussions with the CBC and the possibility of the case being decided by an arbitrator," the Canadian Media Guild said in a statement posted on its website Tuesday, adding that because grievances are confidential, no further details would be provided.

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The CMG did not return the Star's calls for comment, but it appears that the grievance could be on hold.

“Often when there is a parallel criminal proceeding, the grievance and arbitration process is put on hold. Nothing, though, has been decided one way or the other at this point,” said Sean Fitzpatrick, a lawyer who acts for the CMG, in an email to the Star.

While the union waits to see what happens in the courtroom, it is probably looking at the specifics of Ghomeshi’s firing to determine whether his case is worth pursuing, said Stephen Shore, a labour and employment lawyer not involved in the case.

“It’s the union that will make decisions with respect to the grievance, not the individual,” Shore said. “So the union at some point could ultimately decide that it won’t pursue the grievance anymore, and they can do that without Ghomeshi consenting. They can unilaterally make that decision.”

In a statement posted online Thursday, CMG’s national president, Carmel Smyth, didn’t name Ghomeshi, but wrote about the grievance process in the light of the “very public airing of a dismissal.”

“In each case, when a member who has been fired asks us to file a grievance, we must be careful to do so in a timely manner, and then we will further investigate the circumstances before making a decision about whether the grievance is valid, supportable, or winnable,” wrote Smyth.

“Winnable” is an interesting choice of words here, said Shore, that may give the union a pretext to not back Ghomeshi. “As a result, Ghomeshi would be in the position where he can’t bring a court case and the union isn’t going to carry his grievance forward to challenge his termination.”

If the union decides not to pursue the grievance, Ghomeshi would have one last recourse. He could make a complaint to the Canada Industrial Relations Board that he wasn’t fairly represented by his union. Such complaints “aren’t rare, but they are rarely successful,” Shore said.

Employment lawyer Howard Levitt, who has had cases with the CMG and is familiar with its collective agreement, says the success rate for such appeals is less than 1 per cent. “The unions are allowed to be wrong, they’re just not allowed to act in bad faith,” Levitt said.

The CMG could choose not to pursue the case out of consideration for their female members, he said, or simply because they don’t want to spend the money to pursue it. “It would be a reasonable position for (the union) to say, ‘We’re not going to be involved in this cause,’ especially if they believed he did it.”

“I would be very surprised if the union took this case all the way to arbitration,” Levitt said. “I don’t think the criminal outcome is even material. Even if you disbelieve everything the women say, and you believe everything he says, it’s an unwinnable case because of what he admits to,” he said.

“It would damage the brand; it would upset listeners ... who say, ‘I don’t believe in BDSM, especially when injuries and bruising are involved, and I’m not comfortable with that being the radio station I listen to with my morning coffee.’”