

## Current Workplace Issues

### Obligations of Employees - Reasonableness and Good Faith

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Previous Current Workplace Issues have examined duties of reasonableness and good faith conduct on the part of employers. A recent decision from the Alberta Courts concentrates on reciprocal obligations of employees.

In *CR C-Evans Canada Ltd. v. Pettifer*, two employees, Pettifer and Bohuch, were sued for damages by their former employer for alleged breaches of their employment contracts and the fiduciary duty they owed the company. The plaintiff was a specialized company that rented and sold pipeline equipment to a relatively restricted group of contractors. Pettifer and Bohuch were long-term, high-ranking employees who were instrumental to the company's success.

Pettifer resigned March 31, 1991, with Bohuch following two weeks later. The two had secretly decided to form their own company which would directly compete with CRC-Evans. Moreover, in late March, Bohuch provided inside information from his employer to Pettifer which enabled the latter to put in competitive bids on pipeline projects. In taking these steps, they worked with the American equipment suppliers who later became their business partners and CRC-Evans' competitor.

The Court held that this breached the fundamental term of fidelity to the employer which is implied into every employment contract, meaning that an employee act at all times in the best interests of the employer and not harm or place those interests at risk. The breach was magnified because the duty had been actively brought to their attention a few months earlier, in January 1991, when Pettifer and Bohuch had signed statements that they were aware of the company's conflict of interest policy and had entered no agreements or understandings inconsistent with it.

The Court then considered whether the employees' conduct in this case had breached established principles of fiduciary duty extending beyond the fundamental breach of their employment contracts. In the employment context, a fiduciary relationship arises when the employee has a special degree of discretion or power which he or she can exercise in such a way as to affect the employer's legal or practical interests and its existence imposes obligations of loyalty, good faith, and avoidance of conflict of duty and self-interest. Most of the time, the duty of good faith and fidelity is restricted to the period of employment itself, but the facts in this case compelled the Court to determine whether to impose it on Pettifer and Bohuch beyond their resignation dates. As trusted key employees with great discretion and responsibility in the company, their actions were held to be inconsistent with their fiduciary relationship with their employer.

Normally, when there is no restrictive covenant in an employment contract, a mere employee may quit and go into competition with his former employer. Not so in the case of an employee impressed with a fiduciary obligation, as here. In an unusual analysis, the Court determined that, without having a restrictive covenant as a guide to the intentions of the parties themselves, the appropriate time for non-competition based upon breach of the fiduciary relationship by Bohuch and Pettifer should approximate the period of reasonable notice which would have been given to them had they been terminated without cause. In this case, one year was held to be the minimum period



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for non-competition.

The Court awarded damages of \$305,507.72 (discounted by 20% because the Court lacked complete evidence about the new company's profits), plus interest, to CRC-Evans for the loss of projects during the non-competition period. On June 2, 1998, the Alberta Court of Appeal upheld the trial decision.

Properly-drafted non-competition clauses are of great value to employers concerned about the activities of departing employees, but this case provides additional comfort to employers and a warning to key employees that they cannot simply act as they like towards former employers after their departure.

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