

# Sports Agents Have To Play By Their Employer's Rules



Every game has its rules. And when they are breached, penalties are assessed.

In real life, breaking rules also has consequences, sometimes expensive ones, as Richard Evans recently learned.

Evans was employed by The Sports Corporation, a successful sports agency that recruits and manages prospective as well as active NHL players. Evans was placed in charge of TSC's "pipeline" of players from the Czech Republic and Slovakia. TSC had two intermediaries from those countries who sourced clients for Evans.

Evans had a written employment agreement that ultimately was not extended. That agreement contained restrictive covenants which prevented him, for 24 months after leaving TSC, from soliciting its "former" and existing clients as well as its employees.

When Evans left, he forwarded calls from his TSC cellphone directly to his home, set up his own agency and used the same two intermediaries to work for him, which they did for a while before returning to work for TSC. By reason of the nature of the work, agents form close personal connections with their clients. Indeed, many clients followed Evans to his new firm.

TSC cried foul and sued. The trial and appellate courts in Alberta assessed Evans a hefty financial penalty of \$207,463.47.

Evans argued that the restrictive covenant was too broad, hence unenforceable, because it covered not only TSC's existing clients but its former ones. The court agreed. He also argued that the intermediaries were not actual employees of TSC and therefore he didn't breach the clause preventing his soliciting its employees. Here the court disagreed, concluding that they should be treated as employees, so that Evans was in breach. It also found that, even without the contract, he violated his fiduciary duty to TSC because he was entrusted by TSC with the Czech and Slovak player "pipeline" but took advantage of that relationship to divert clients from TSC to his new firm.

Employees, especially those with written employment agreements and/or occupying positions of trust with their employers, have to play by the rules – and if they don't they can be severely penalized.

This decision by the Alberta Court of Appeal demonstrates that the view that many employees and employers (and many lawyers) still have as to fiduciary status is outdated. Many believe that only the most senior executives are fiduciaries. The law has long evolved beyond that. As result of that misapprehension, many employees post-departure, violate their obligations, unaware of their existence. Similarly, employers, uninformed as to the developments in the law, permit former employees to take their clients, other employees or business opportunities because they were unaware that they could have sued those employees for damages or restrained the solicitation entirely.

The reality is as follows. If an employee is employed in a position of trust and the nature of the parties' relationship makes the employer vulnerable to that employee, the courts will often impose fiduciary obligations, even on relatively junior employees such as Evans.

*Article by Howard Levitt*

**Levitt & Grosman LLP**