

Violating Employer's Trust – Grounds for "With Cause" Termination



Dismissing an employee without notice on the basis of “cause” can only be justified by misconduct of the most serious kind and it is often difficult for employers to successfully argue a “with cause” termination. The recent BC Supreme Court decision of [Steel v. Coast Capital Savings Credit Union](#) indicates that violation of trust placed by an employer in an employee may be sufficient to justify a “with cause” termination. The termination in this case arose from an employee’s unauthorized access of a document held in the personal folder of another employee, which was located on the employer’s computer network.

Background Facts

At the time of her termination, Ms. Steel had been employed by Coast Capital for just over 20 years and had held the position of Helpdesk analyst in the IT Department for over 10 years. As Helpdesk analyst, Ms. Steel provided internal technical assistance to other employees of Coast Capital when they experienced trouble with the network. As a result, she was able to access any document or file on the network. Although the position was not at the managerial level, the Helpdesk analyst was unsupervised on a day-to-day basis and no-one monitored the documents that the analyst accessed or the reasons for such access.

The job description for the Helpdesk analyst included the following:

- *At all time, abide by the corporate policies regarding professional conduct (i.e. Code of Conduct and Conflict of Interest policies, Policy of Dishonest Conduct, dress code, etc.)*
- *Be a positive role model and lead by example*
- *Help maintain security of physical premises, property and information as per internal control procedures, as well as a safe workplace as per WCB requirement*
- *Respect the privacy and confidentiality of all customer and staff information at all times*

In addition to the broader statements in the Helpdesk analyst’s job description regarding privacy and confidentiality, Coast Capital had also adopted policies and protocols with respect to access to information.

Each employee on Coast Capital’s internal system was assigned a “personal folder” which was maintained on the network for the sole use of the employee. The personal

folder was intended to be used for confidential information relating to the company and the information contained in the personal folder could only be read or edited by the employee assigned to the folder. The only exception to this general rule related to employees such as the Helpdesk analysts, who were permitted to access other employee personal folders in order to assist with technical problems. However, such access had to be first authorized by the employee who had been assigned the personal folder or approved by the VP of corporate security.

Termination of Ms. Steel's Employment

Coast Capital had a limited number of parking stalls available to be assigned to employees at the IT Department's workplace and the manager of Coast Capital's Facilities and Purchasing Department (the "Facilities Manager") maintained a spreadsheet in her personal folder for the purpose of assigning the stalls. The spreadsheet designated a list of priorities for the limited number of parking stalls, and included confidential employee information such as pay grades and seniority dates. Ms. Steel did not have a parking stall and was affected by the list of priorities contained in the spreadsheet.

In July 2008, the Facilities Manager informed Ms. Steel's supervisor that she had tried to access the parking priorities spreadsheet but had received a systems message advising that the document was already in use by Ms. Steel. Upon learning that Ms. Steel had accessed the spreadsheet without authorization from the Facilities Manager (to whom the personal folder was assigned), or the VP of corporate security, Coast Capital terminated Ms. Steel's employment several days later on a "with cause" basis. In the termination letter, Coast Capital advised Ms. Steel that her unauthorized access of the parking priorities spreadsheet had resulted in Coast Capital losing confidence in her judgment and that her actions had irreparably damaged the employment relationship.

Wrongful Dismissal Action

Ms. Steel commenced an action against Coast Capital, claiming that she had been wrongfully dismissed.

Ms. Steel's evidence at trial was that she had accessed the parking priorities spreadsheet to assist her supervisor, who was involved in the parking designation process. This evidence was refuted by the supervisor, who advised that he had never asked for the document and had indicated at a department meeting that he would discuss the parking issue with the Facilities Manager directly.

The evidence also showed that as part of her annual review, Ms. Steel acknowledged that she had reviewed, understood and signed off on several Coast Capital policies relating to privacy and confidentiality.

The Court found that Ms. Steel had accessed the parking priorities spreadsheet for her own purposes and without permission to do so, and that these actions violated Coast Capital policies and protocols regarding confidential information. The BC Supreme Court held that, in these circumstances, Ms. Steel's actions in accessing the Facilities Manager's personal folder document, justified her termination without notice.

In upholding Ms. Steel's termination as justified, the court found that Ms. Steel held a position of great trust in an industry in which trust is of central importance. In that regard, the court noted that *"a relationship of trust has been found to be particularly critical in the banking industry where employees are held to a higher standard of trust than employees in other commercial and industrial*

undertakings". In addition, Ms. Steel's significant autonomy in her position justified holding her to a higher standard of trust: "*the greater the autonomy the employee enjoys, the more fundamental trust becomes to the employment relationship*". The court held that it was not practicable for Coast Capital to monitor the documents that Ms. Steel accessed and the purpose for which she accessed them. Instead, it had to trust its employee to obey the policies and follow the protocols that it had established for confidential information.

What can employers take from this decision?

- If any principles (such as privacy or confidentiality) are critical to the employer and the employee's position, those principles should be reflected in the written policies and protocols of the company and the job description for the applicable position.
- The written policies and protocols should be clear and must be communicated to the employee by the employer.
- The employee's annual review potentially provides a valuable opportunity for the employer to confirm the employee's awareness of key policies and protocols.

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About the Author

Allyson Baker is a partner with the firm's practice groups in the following areas: Infrastructure, Construction & Procurement, Strata Property, Employment and Higher Learning and serves a broad range of institutional, public sector, corporate and strata corporation clients.

Allyson graduated from Queen's University in Kingston with a Bachelor of Science (Honours) in Biochemistry in 1989. She earned a Bachelor of Laws from the University of British Columbia in 1993. Allyson re-joined Clark Wilson in 2003, after working for litigation boutique firms in Toronto and Vancouver.

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