

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act R.S.B.C. 1996, C. 113*

- by -

Shelley Elisa Corbett/Lucas Jurek operating as  
Quesnel Audiology and Hearing Aid Centre  
("QA&HAC")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 1999/389

**DATE OF HEARING:** October 25, 1999

**DATE OF DECISION:** November 8, 1999

**DECISION**

**APPEARANCES**

Shelley Corbett	on behalf of Shelley Elisa Corbett/Lucas Jurek operating as Quesnel Audiology and Hearing Aid Centre
Lucas Jurek	on behalf of Shelley Elisa Corbett/Lucas Jurek operating as Quesnel Audiology and Hearing Aid Centre
Ann Stackhouse	on her own behalf
Grant McLeod	on behalf of Ann Stackhouse

**OVERVIEW**

This is an appeal by Shelley Elisa Corbett/Lucas Jurek operating as Quesnel Audiology and Hearing Aid Centre (“QA&HAC”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated May 31, 1999 issued by a delegate of the Director of Employment Standards (the “Director”). QA&HAC alleges that the delegate of the Director erred in the Determination by concluding that QA&HAC owes compensation for length of service to Ann Stackhouse (“Stackhouse”) in the amount of \$210.02 (includes interest).

This matter was the subject of a previous hearing before the Tribunal however, that hearing was decided on the basis of a preliminary issue of the incorrect employer being named in the Determination and no conclusions were made with respect to the merits of the issues in dispute.

**ISSUE TO BE DECIDED**

The issue to be decided in this appeal is whether Shelley Elisa Corbett/Lucas Jurek operating as Quesnel Audiology and Hearing Aid Centre (“QA&HAC”) owe compensation for length of service to Ann Stackhouse (“Stackhouse”).

**FACTS**

The following facts are not in dispute:

- Stackhouse was employed by QA&HAC as a receptionist commencing April 1, 1996;
- Stackhouse was paid at the rate of \$9.00 per hour;
- Stackhouse was terminated on February 12, 1997.

Shelley Corbett (“Corbett”) and Lucas Jurek (“Jurek”) testified on behalf of QA&HAC and stated that:

- the reason for the termination of Stackhouse was her actions in discussing with a competitor the personal relationship of Corbett and Jurek, the fact that they worked at both the Quesnel and Williams Lake location therefore were only available part-time at each location and disclosing sales volume information with regard to a specific client base;
- Stackhouse knew that this information was to be kept confidential and not disclosed;
- the actions of Stackhouse constitute a breach of confidentiality and are just cause for termination;
- Jurek overheard the conversation between Stackhouse and the competitor on February 12, 1997;
- Jurek discussed his concerns with Corbett and then advised Stackhouse later that day she was terminated due to disclosing confidential information;
- Corbett and Stackhouse had discussed which information was considered to be confidential and how to deal with friends and acquaintances who called looking for either Corbett or Jurek when they were in Williams Lake;
- Stackhouse’s statements to the delegate of the Director confirm that she knew she was discussing information which was to be considered as confidential;
- they were not concerned about the knowledge of the second clinic in Williams Lake as that clinic had been in operation for at least 2 years;
- they were however, concerned with the possibility of a competitor taking advantage of the part-time nature of their attendance at the 2 clinics;
- the delegate of the Director did not reach any conclusion with respect to the actions of Stackhouse in disclosing confidential information rather, the delegate of the Director focused on whether the release of this information had the potential effect of harming the business.

Stackhouse testified and stated that:

- she thought she was only doing what she had been told to do by Corbett which was to be friendly to the competitor who had and was referring clients to QA&HAC;
- Corbett had told her when she was hired that Corbett, Jurek and Martin Jurek ( Lucas’ brother) would be working two days/week in the Quesnel office and two days/week in the newly purchased Williams Lake clinic and further Corbett told her that his information was to be kept confidential;
- in the beginning she kept the information confidential but was concerned about “lying” to clients who called and asked to speak to Corbett or Jurek when they were at the other clinic;
- Corbett discussed her concerns and they agreed on certain phrases to use which would address the questions raised by clients and yet permit Stackhouse to feel she was not “lying” to them;

- when the competitor called on the telephone the competitor seemed to know about the second clinic in Williams Lake and mentioned that she had read both Lucas Jurek and Martin Jurek's names in the minutes of the BC Board of Hearing Aid Dealers and Consultants;
- she realized then that the information about the 2 clinics wasn't really a secret anymore and felt it was OK to discuss this with the competitor;
- she felt that the issue of what was "confidential information" was a gray area and fast becoming common knowledge;
- she felt confused as some information was only considered as confidential in some circumstances and could not be disclosed to some people but was OK to be disclosed to others;
- she did not understand the concern of Corbett and Jurek with respect to the part-time availability issue until she heard Corbett explain it at this hearing;
- while she did not originally recall having made any comments to the competitor with respect to customer and sales volume, she does now recall having made some comments to that extent when speaking to the competitor;

The delegate of the Director stated in the Determination that "Revelation or improper disclosure of confidential information does constitute just cause for dismissal (i.e. dismissal without prior written notice or wages in lieu of notice) However, one has to establish the meaning of confidentiality, how it was breached and the consequences of such breach of confidentiality to the business."

The delegate of the Director relied upon the definition of confidential information from **Webster's Collegiate Dictionary** which states:

"containing information whose unauthorized disclosure could be prejudicial to the (business) interest."

The delegate of the Director then goes on to summarize the case at hand with respect to the above definitions.

The delegate of the Director determined that "It has not been proven that the complainant disclosed information that could have prejudiced the business interest" therefore QA&HAC owed compensation for length of service to Stackhouse.

## **ANALYSIS**

The onus of establishing that the delegate of the Director erred in the Determination rests with the appellant, in this case, QA&HAC.

QA&HAC alleges that just cause existed for the termination of Stackhouse and therefore no compensation for length of service is owing.

QA&HAC acknowledges that if it is determined just cause did not exist for the termination of Stackhouse, compensation for length of service is owed to Stackhouse.

The issue of whether a breach of confidentiality constitutes just cause for termination is considered in **The Law of Dismissal in Canada [H.A. Levitt] (2nd Edition)** as a “breach of duty or fidelity”. Levitt’s goes on to state at pages 133-4:

“An employee has an implied duty at law to be faithful to his employer and not knowingly jeopardize its interests or act in a manner incompatible with the faithful discharge of his duty to he employer. Although there is no limit to the type of conduct which can fall within this category, the usual areas in which this issue arises are as follows:

*2. Revelation of Confidential Information*

Improper disclosure of confidential information constitutes just cause for a discharge.....”

The question that often arises is what is confidential information in the business environment. **Black’s Law Dictionary [6th Edition]** defines “confidential” as:

“**Confidential.** Intrusted with the confidence of another or with his secret affairs or purposes; intended to be held in confidence or kept secret; done in confidence.”

The evidence is that the importance of keeping certain information confidential was related to Stackhouse at the time of her hire by Corbett. The evidence also discloses that during the early part of Stackhouse’s employment several instances arose in regard to confidentiality issues and that Corbett and Stackhouse discussed the best manner in which to deal with those issues.

The evidence is that Stackhouse was aware of which information QA&HAC wanted to be kept confidential. The evidence further discloses that Stackhouse discussed information she knew to be confidential with a competitor because she believed that competitor to be a good business friend of QA&HAC. Stackhouse further stated that in her opinion, the matter of what was confidential was a “gray area”.

Stackhouse offered no explanation as to why she did not wait to discuss her concerns with QA&HAC as she had previously done rather than openly discuss confidential information with a competitor. Stackhouse further acknowledges that she discussed customer and sales volume with the competitor during their telephone conversation.

It is not necessary, in my view, to consider only whether the information disclosed could have a prejudicial effect on the business rather, one must also consider that disclosing information which an employee has specifically been told to not disclose amounts to

insubordination by the employee in the same way that refusal to obey any other instruction from the employer does.

For all of the above reasons, based on the evidence provided and on the balance of probabilities, I conclude that QA&HAC have established just cause for the termination of Stackhouse on February 12, 1997. Compensation for length of service is therefore not owed to Stackhouse.

The appeal by QA&HAC is allowed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated May 31, 1999 be canceled.

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**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**