

Big Title, Little Evidence – The ONCA Weighs In On Fiduciary Status and Post-Employment Duties in *Titus Steel Company Limited v. Hack*

March 23, 2026

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Departing employees owe duties of good faith, loyalty, and fidelity to their employer, regardless of how the employment relationship ends. But those duties are usually narrow. In most cases, a former employee must not misuse the employer's confidential information or trade secrets, but is otherwise free to compete, including immediately after departure, and to use the general skills, knowledge, and experience gained during employment.

Fiduciary employees are different. Although they too may compete after leaving, some fiduciary obligations survive termination. Ontario courts have recognized that those residual obligations can, for a reasonable period, prevent a former fiduciary employee from directly soliciting the employer's customers.

The hallmarks of a fiduciary relationship are that the fiduciary: (i) has discretion or power; (ii) can exercise that discretion or power unilaterally in a way that affects the beneficiary's legal or practical interests; and (iii) holds that power in circumstances where the beneficiary is especially vulnerable to its exercise.

The Ontario Court of Appeal recently revisited these principles in [Titus Steel Company Limited v. Hack](#), 2025 ONCA 693, a case that underscores two practical points: executive titles do not, by themselves, create fiduciary obligations, and even where misconduct is established, damages still have to be proved.

Background

The dispute arose between Titus Steel Company Limited ("Titus"), a family-run business, and Wayne Hack ("Hack"), who was hired as Director of Sales and later promoted to Vice President of Titus's Dynamic Steel Division. Despite the promotion, Hack's role remained largely sales-focused. His compensation structure also remained substantially the same.

After resigning, Hack started a competing business. Titus later discovered that he had copied more than 1,000 company documents. Titus alleged that Hack had breached his obligations either as a fiduciary or, alternatively, as an employee, by competing and by using documents misappropriated from Titus. It sought damages tied to sales made through Hack's new business to two companies.

The Trial Decision

The trial judge found that Hack was not a fiduciary and that Titus had not established breach of confidence. She also found that Hack had not breached his employment duties of good faith, loyalty, and fidelity merely by competing, but that he had breached these duties, and committed the tort of conversion, by misappropriating Titus's business records and sharing them with his competing

business.

Even so, Titus recovered no damages. Although it succeeded on conversion and on part of its post-employment obligations claim, it failed to prove any resulting loss. In particular, the evidence did not establish that Titus was unable to recover deleted data or that its customer database had been affected in the way alleged.

On fiduciary status, the trial judge focused on Hack's actual responsibilities rather than his title. She found that his role remained primarily sales-driven, he exercised little real discretion, he could not hire or fire staff, and his work was subject to significant oversight by Titus's president. On those facts, Titus was not sufficiently vulnerable to Hack in the manner required to establish a fiduciary relationship.

The breach of confidence claim failed for similar evidentiary reasons. To establish breach of confidence, a plaintiff must show that: (i) the information had the necessary quality of confidence; (ii) it was communicated in circumstances importing an obligation of confidence; (iii) it was used without authorization; and (iv) the unauthorized use caused loss.

Only two documents were found to have the necessary quality of confidence. The rest were largely emails to outside parties or documents that Titus had not shown were confidential or competitively useful. And even as to the two qualifying documents, the claim still failed because Titus did not lead evidence that the defendants had actually used the information to make sales, or how it could have assisted them in doing so.

The Court of Appeal's Decision

Titus appealed, arguing in part that the trial judge had failed to follow her own approach to credibility and reliability. In her reasons, the judge had noted concerns with both Hack and Titus's key witness, and stated that she accepted their evidence only where it aligned with other witnesses, contemporaneous documents, or other admissible and reliable evidence.

Titus argued that the trial judge failed to apply that framework consistently and that her reasons were insufficient because they did not adequately explain the evidentiary basis for her findings. The Court of Appeal rejected both arguments, finding that the trial judge's core findings were available on the record, including that Hack was not a fiduciary, that he had not breached his employment duties apart from his improper retention of business records, and that Titus had failed to prove compensable loss. In particular, Titus had not led evidence showing that Hack's competing business caused it to lose customers or profits.

Key Takeaways for Employers

The decision is a useful reminder that post-employment claims still turn on evidence, not indignation. A senior title will not, on its own, make an employee a fiduciary.

Employers should remind departing employees of their post-employment obligations (whether or not they are fiduciaries) and have an established process for the return of all employer property and documents such as company phones, computers or physical copies of documents. Regular monitoring of the company's electronic resources (with the appropriate policies regarding electronic monitoring) can also reduce the risk of unauthorized access and use of confidential information by employees and will allow the employer to respond in a timely manner when unauthorized access or use is discovered.

And even where an employee's conduct crosses the line, the employer still has to prove that the misconduct caused actual loss in order to be successful in a civil action. Without that link, liability may be established in theory but damages will remain out of reach. As such, employers should consider what steps they can take in establishing terms and conditions of employment that apply post-

employment, to minimize the risk that employees will engage in post-employment behaviour that is detrimental to the company, that do not require the employer to prove losses.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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