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CC0002 NAVIGATING THE DIGITAL WORLD

The Effects of Whistleblowing on Breach of Confidentiality Cases

**Tutorial Group 28
Group 4**

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1 Introduction

Technology has shown its hand in its ability to transmit messages almost instantaneously, it has also introduced a fast and efficient way to mishandle said information. This report aims to focus on breach of confidence of intellectual property, particularly, non-public information of organisations.

This report will be discussing two case studies. Both case studies will shed light on the effect of breach of confidence and the impact it brings about. Breach of confidence can take place when a worker either intentionally or unintentionally, discloses or uses information that could damage the employer's business, clients, or employees. The first article discusses unlawful breach of confidence and its detrimental consequences while the second will be an example of a legal breach of confidence. The subject of the second article is involved in a case of whistleblowing. Whistleblowing is when an individual breaks ranks within an organization in order to make an unauthorized disclosure of information about a harmful situation. We will be discussing how valid whistleblowing exempts an individual from being sued for breach of confidence. This report compares the two topics side by side due to their interconnectivity. The choice of topics also stems from our belief that more can be done to improve both the protection of intellectual property as well as whistleblowers in Singapore.



Fig 1. Advancement of technology devices

2 Breach of Confidence

2.1 Definition

A breach of confidence requires that unauthorised use of information presents a real or potential detriment to the plaintiff. It also states that the defendant has a duty of confidence if the information has the necessary quality of confidence and is conveyed in circumstances importing the obligation of confidence.

To have a necessary quality of confidence, the information must both be inaccessible to the public and nontrivial. Circumstances importing obligation of confidence include relationships (i.e. employer-employee relationship or friendship) or a notice of confidentiality (Ahurst, 2020).



Fig 2a. Breaching of data

2.2 Case Study on Breach of Confidence

2.2.1 Background

In the case of *I-Admin (Singapore) Pte Ltd v Hong Ying Ting and others* (Ahurst, 2020), plaintiff I-Admin (Singapore) Pte Ltd ("I-Admin") made claims against former employees, "Mr Hong" and "Mr Liu" for breach of confidence.

In 2011, Mr Hong and Mr Liu resigned from I-Admin to join another company, Nice Payroll. Two years later, I-Admin discovered that Nice Payroll had been providing services that were substantially similar with the geographical scope of I-Admin. Investigations found that not only did the respondents possess and circulate I-Admin's confidential documents, they had deleted the files while investigations were ongoing.



Fig 2b. I-Admin Singapore

2.2.2 Outcome and Reasoning

I-Admin won the case and received equitable damages. The case leaned heavily in their favour as the duty of confidence was fulfilled.

Under necessary quality of confidence, the court found that the information was important enough to fulfil the wrongful gain interest - whereby it is in the plaintiff's interest to prevent the wrongful gain or profit from its confidential information. The court also found that the materials, a vital part of I-Admin's business, were confidential in nature.

Next, Mr Hong and Mr Liu's employment relationships with I-Admin made them obligated to withhold sharing such information with others.

With no valid reason to breach the I-Admin's confidence, it was expected that Mr Hong and Mr Liu would have lost the case.

3 Whistleblowing

3.1 Definition

Whistleblowing involves making unauthorized disclosure of information about unethical or illegal activities within an organization. Such activities can be insignificant or quite detrimental to people and organizations. Whistleblowing helps prevent wrongdoing especially in the cases of corporate fraud. Around 40% of occupational fraud worldwide is debunked through whistleblower tips. Beyond just putting a halt to ongoing malpractice, whistleblowing acts as a deterrence for others to commit such crimes. This is due to the fact that essentially anyone can blow the whistle and result in an individual's imprisonment.

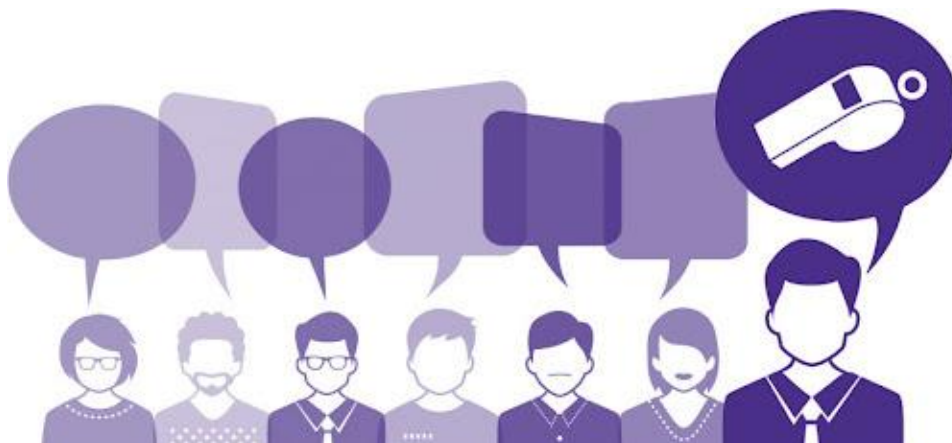


Fig 3a. Whsiteblower

Richard T. De George mentioned in his book *Business Ethics*, that whistleblowing is permissible and morally obligatory under specific conditions and circumstances (1982).

Conditions for whistle-blowing to be permissible:

- i. Serious and considerable harm has done or will be done to the employees or public by a company.
- ii. The employee has informed their supervisors and made their moral concern known when they identify a serious harm of the product or an act to the public.
- iii. The employee has exhausted all internal channels, including going to the board of directors, after receiving no satisfaction from their immediate supervisors.

Conditions for whistle-blowing to be morally obligatory:

- i. The employee has documented facts that would persuade a reasonable, unbiased observer that his or her concern for public safety is valid and that the company's product or behavior is likely to cause serious and significant public harm.
- ii. The employee must have solid reason to believe that going public will result in the appropriate adjustments. The likelihood of succeeding must be worth the risk and danger that one faces.

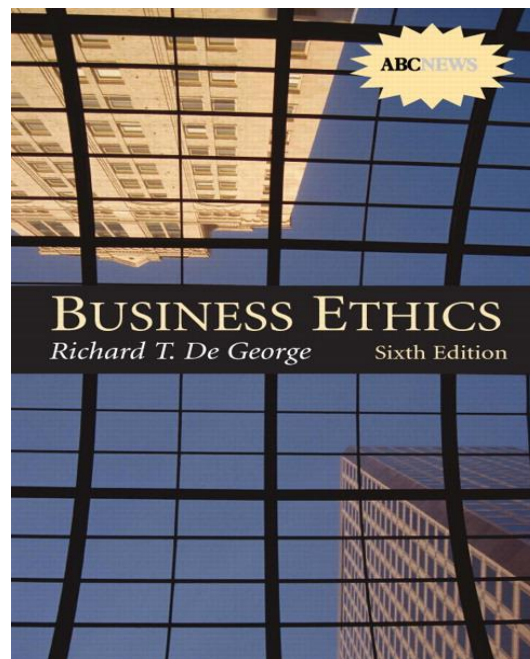


Fig 3b. Business Ethics By Richard T. De George

3.2 Case Study on Whistleblowing

Mr Amjad Rihan v (1) Ernst & Young Global Limited (2) Ernst & Young Europe LLP (3) Ernst & Young (EMEIA) Services Limited (4) EYGS LLP

3.2.1 Background

Mr Amjad Rihan worked for Ernst and Young from 2008 to 2014. In 2013, in Dubai, he was involved in an assurance audit of Kaloti Jewellery International DMCC who is a dealer of precious metals, where he was tasked to write about the quality of their business practices.

During the audit, he found out that there were severe irregularities: Kaloti traded gold coated in silver to evade restrictions in Morocco on the exporting of gold. These transactions were worth approximately 5.2 billion USD. Also, he was concerned that they were involved in a large scale money laundering ploy and thus he blew the whistle, reporting these events to the Dubai authorities.

He escalated the matter to the regional and global level, and in concern of his safety, left Dubai. He thought that the Dubai authorities would report his findings to the LBMA, a UK company, international trade association and non-governmental regulator in the gold trade, which ultimately turned out to be a false promise.

To worsen the situation, Mr Rihan was replaced by an accountant that helped to sweep matters under the carpet. He warned E&Y that he would disclose the findings if they did not do so themselves. Eventually, he resorted to handing over the findings to Global Witness and the media. (Cordery & Andrewes, 2020).



Fig 3c. Ernst & Young

3.2.2 Outcome and Reasoning

He was awarded USD10.8 million in damages for being forced out of his job. (Cordery & Andrewes, 2020) The high court judged that he had a valid claim-which was that E&Y breached their duty as they did not prevent him from suffering financial loss although he carried out the audit professionally and ethically.

In normal circumstances, whistleblowing claims would be judged by the Employment Rights Act. However, this is a special case as none of the people that he blew the whistle to was his employer. As such, this unique case extended the existing “duty of care”-which is the duty to

provide a free from misconduct, ethical as well as safe working environment. This new duty protects whistleblowers whose careers would be disrupted by their employees or other parties actions.

This case study breaches confidentiality as audit reports are usually confidential unless released by the company themselves in the financial statements. However, Mr Rihan handed over his findings to a human rights organization as well as the media, in which he is publicising this information.

4 Comparison

The case of *Coco v A.N. Clark(Engineers) Ltd* sets out that three conditions must be fulfilled for an action for breach of confidence to be successful.

Conditions in order to succeed on a claim for breach of confidence:

1. The information is confidential in nature, where the information must not be in the public or common knowledge.
2. The owner shared the information in confidential circumstances.
3. The recipient used the unauthorized information to the detriment of the owner/party from whom the information originated.

Therefore in both *I-Admin (Singapore) Pte Ltd v Hong Ying Ting* and *Mr Amjad Rihan against Ernst and Young Group of Companies* case study, the three conditions have been fulfilled where I-Admin and Ernst and Young have the valid reasons to claim for the breach of confidence. In the first case study, breach of confidence was claimed as confidential information was unauthorizedly shared by Mr Hong and Mr Liu to fulfill wrongful profit in another organization, Nice Payroll. Similarly in the second case study, breach of confidence was also established when Mr Amjad Rihan shared the confidential audit reports to third parties such as human rights organizations and the media company.

However, the case study of *Mr Amjad Rihan against Ernst and Young Group of Companies* was also an example of whistle-blowing being permissible and morally obligatory.

Mr Rihan has found out that his client *Kaloti Jewellery International DMCC* was suspected to be involved in money laundering. He informed his supervisors and authorities but received no satisfaction from them as Mr Rihan was replaced by an accountant. Mr Rihan even warned E&Y that he would disclose the findings to higher authorities if they did not do so themselves. Hence, it is permissible for Mr Rihan to blow the whistle. Since Mr Rihan is an auditor, he has easy access to the financial information of *Kaloti Jewellery International DMCC*, where he found quantitative proof to show Kaloti traded gold coated in silver. Mr Rihan also believed that going public would result in a better appropriate outcome, and

succeeding in whistle-blowing is worth the risk and danger he faced. Hence, it is also morally obligatory to whistle-blow and inform higher authorities.

Therefore in Mr Rihan's case, it is proven that he has the valid reasons for breaching confidence because it is necessary in the action of whistleblowing as an act to defend the public's interest.

Hence, in this situation, a case of breach of confidence against Mr Rihan will be much weaker as compared to one against Mr Hong and Mr Liu. This is because the latter breached confidence solely for personal gain and not for a valid reason like that of Mr Rihan.

5 Suggestions

5.1 Encourage Whistleblowing

To encourage whistleblowers in Singapore, we suggest introducing legislation that automatically protects their rights to anonymity (unless it is later found that they had deliberately lied). Doing so may provide whistleblowers with a sense of comfort that their jobs, livelihood and safety will not be affected as a result of reporting crimes.

Next, we suggest that all companies have their own whistleblowing policies. Smaller companies can approach external Human Resource companies to handle whistleblowing cases to ensure anonymity.



Fig 5a. Promoting whistleblowing in workplace

5.2 Improving Intellectual Property

We suggest having mandatory training programs for all large corporations and SMEs that teaches employees of intellectual property laws. They will learn what information is considered confidential and who they are allowed to share it with. They will also be given scenarios to which they are obligated to reveal said information (whistleblowing). Laws pertaining to other forms of intellectual property like copyright, patent and trademark will also be included in the program. We hope that by educating more employees of intellectual property rights, businesses will be able to retain their commercial value and profit, contributing to the growth of Singapore's economy.

Next, we suggest using time-stamping services that provide a digital seal of data integrity with the date and time. This allows the parties involved to check the date and time a document was created and its authenticity (E-timing, n.d.). As a result, a time-stamp enables us to verify that a document existed at

one point in time and that its data has not been altered with or forged. This document cannot be reissued once it has been generated or changed (E-timing, n.d.). This provides robust protection for a company's trade secrets and confidentiality as marking them prevents alterations from other parties even if they are leaked.



Fig 5b. Protecting Intellectual property

6 Conclusion

This report compares two cases of breach of confidence, with one having a valid reason to breach and the other not. Mr Rihan's reporting of fraudulent behaviours in the second case study fulfilled the requirements of a public interest defence. It also fulfilled the conditions required for whistleblowing to be obligatory. Hence, while Mr Rihan did break a law by breaching the confidence of his clients, he had a valid reason to do so, unlike Mr Hong and Mr Liu in the first case study.

To prevent breach of confidentiality, we suggest greater emphasis for education on what type of information is considered confidential and the dangers of breaching this information. However, there are instances where whistleblowing is necessary. When the need arises, we suggest that greater protection is offered to these whistleblowers, who have their futures possibly disrupted.

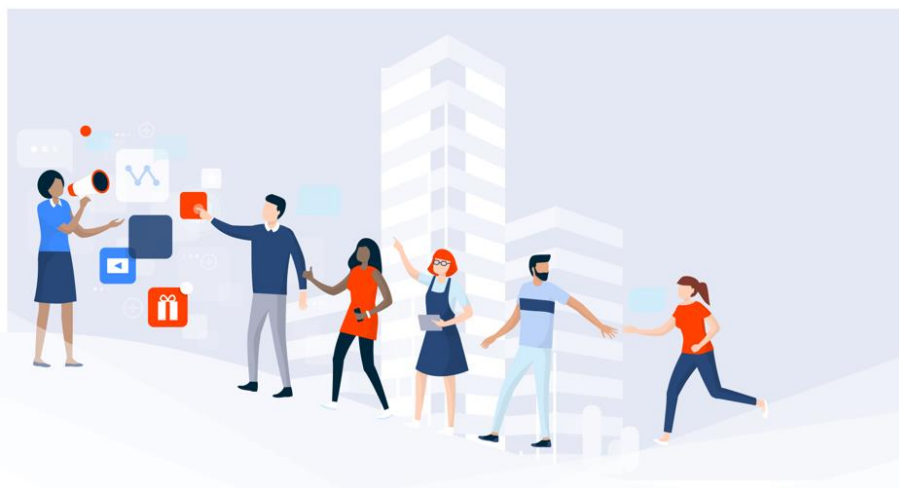


Fig 6. Promoting good work environment

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