

The Proof is in the Paperwork: Ontario Court Upholds Termination for After-Acquired Cause

Stephanie Kay

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In *Birnbaum v. Dr. Chan*, [2026 ONSC 2009](#), the Ontario Superior Court dismissed an action for wrongful dismissal and human rights damages brought by a former long-service employee against Dr. Victoria Chan (Dr. Chan) and her Respiriology and Sleep Disorder Medical Clinic (the Clinic), concluding that the Clinic had after-acquired cause for termination due to the employee's well-documented history of unauthorized, improper usage of the Clinic's electronic medical record database.

Background

The plaintiff, Elka Birnbaum, worked as a medical secretary at Dr. Chan's Clinic for approximately 19 years, most recently on a part-time basis.

In 2014, Dr. Chan discovered that Ms. Birnbaum had used the Clinic's electronic database to request medical records and diagnostic test results from multiple hospitals for herself and for members of her family who were not patients of the Clinic. In doing so, Ms. Birnbaum violated the Clinic's policies regarding patient privacy and confidentiality. Shortly after discovering these violations, Dr. Chan told Ms. Birnbaum that such conduct was a serious breach of confidentiality and was not permitted in her employment. Dr. Chan confirmed her instructions via an email to Ms. Birnbaum. Ms. Birnbaum was also subsequently required to participate in ongoing training and education regarding patient health information and privacy. The Clinic documented Ms. Birnbaum's participation in these training sessions in 2017 and 2019.

At the start of the COVID-19 pandemic in March 2020, Ms. Birnbaum requested to work remotely from home because she said she no longer felt safe working at the Clinic in-person due to her age and health issues, as well as those of her husband.

In response to this request, Ms. Birnbaum was provided with two weeks' paid leave. At the end of this paid leave, Ms. Birnbaum's employment with the Clinic was terminated without cause due to the extreme downturn in overall business and the confidentiality and security requirements for patient data preventing remote work. Ms. Birnbaum was initially provided with 12 months of salary continuance in lieu of notice.

Following her termination, Ms. Birnbaum requested access to a medical chart she had created. This request resulted in Dr. Chan's discovery that, despite receiving a warning in 2014 and being required to participate

in training on privacy and confidentiality issues in 2017 and 2019, Ms. Birnbaum had again inappropriately and repeatedly used the Clinic's electronic medical record database to access and modify both her own medical records from other healthcare providers and her family members' medical records, including the medical chart she had requested from Dr. Chan following the termination of her employment.

The Clinic subsequently withdrew the salary continuance offer on the basis that Ms. Birnbaum's misconduct amounted to after-acquired cause. Accordingly, Ms. Birnbaum only received her minimum statutory entitlements under the *Employment Standards Act, 2000*.

Ms. Birnbaum proceeded with her wrongful dismissal claim. She also alleged (among other things) that Dr. Chan and the Clinic breached the Ontario *Human Rights Code* (the Code) by failing to accommodate her request for remote work accommodation.

The Decision

Justice Pollak rejected the wrongful dismissal claim, finding that it was critical for the existence of the employment relationship that Dr. Chan could trust Ms. Birnbaum to observe the requirements and conditions of the Clinic's electronic medical record database. Accordingly, the Clinic had after-acquired cause to terminate Ms. Birnbaum's employment, as her misconduct struck at the heart of the employment relationship.¹

The key question is whether an employee's misconduct is incompatible with the fundamental terms of the employment relationship. Despite internal policies, repeated warnings and training on patient privacy and confidentiality, Ms. Birnbaum engaged in a pattern of serious misconduct, which warranted her dismissal for just cause.²

In this case, Ms. Birnbaum knew or ought to have known of the severity of her misconduct as of November 2014, based on her training in patient confidentiality and the electronic medical record database's built-in system warning.³ Nonetheless, the evidence clearly illustrated that Ms. Birnbaum continued this conduct throughout her employment.

With respect to the alleged contraventions of the Code, Justice Pollack found that Dr. Chan accommodated Ms. Birnbaum through reasonable measures to the point of undue hardship within the context of the sudden COVID-19 pandemic.⁴ An employer is obligated to implement a form of accommodation that is reasonable, rather than the employees ideal form of accommodation or preferred form of accommodation.⁵

Justice Pollack determined that Ms. Birnbaum failed to satisfy her burden of proving entitlement to damages on any of the grounds she pleaded. The Court did not address claims for which Ms. Birnbaum did not make any submissions on at trial.

Key Takeaways

The *Birnbaum* decision underscores the importance of keeping training records as well as records of coaching and warnings delivered to employees. The Court relied upon the employer's records to conclude that the employee's ongoing serious misconduct, despite repeated warnings and training, supported termination for after-acquired cause.

This case also reiterates that the duty to accommodate is a fact-specific analysis whereby an employer must provide reasonable accommodation based on the circumstances.

If you have questions regarding terminations or after-acquired cause, please contact any member of the Cassels [Employment & Labour Group](#).

¹ *Birnbaum v. Dr. Chan*, [2026 ONSC 2009](#) at [para 62](#) [*Birnbaum*].

² *Birnbaum* at [para 42](#).

³ *Birnbaum* at [para 57](#).

⁴ *Birnbaum* at [para 31](#).

⁵ *Birnbaum* at [para 18](#).