**IN THE SUPREME COURT OF NOVA SCOTIA**
**Citation:** ACI Technologies v. Currie, 2006 NSSC 295

**Date:** 20060622
**Docket:** SH 246254
**Registry:** Halifax

**Between:**

ACI Technologies, a division of Akinai Canada Inc.

Plaintiff

v.

Greg Currie, Larry O'Brien, Donald Carter
and Pinnacle Office Solutions Limited

Defendants

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| **Judge:** | The Honourable Justice C. Richard Coughlan |
| **Heard:** | June 22, 2006 (in Chambers), at Halifax, Nova Scotia |
| **Decision:** | June 22, 2006 (Orally) |
| **Written Release:** | October 6, 2006 |
| **Counsel:** | Daniela Bassan, for the plaintiff<br>James P. Boudreau and Stephen Campbell (articled clerk), for the defendants, Greg Currie and Larry O'Brien<br>Ian C. Pichard, for the defendants, Donald Carter and Pinnacle Office Solutions Ltd. |

**Coughlan, J.:** (Orally)

[1] The plaintiff claims against the defendants for various matters, including: breach of fiduciary, contractual and equitable duties; misuse and conversion of confidential information; interference with business and contractual relations; conspiracy to defraud and injure ACI Technologies; unfair competition; deceit and fraudulent misrepresentations.

[2] The defendants, Currie and O'Brien, defend the plaintiff's claim, saying the actions and misrepresentations of the plaintiff amount to a fundamental breach of their employment contracts, such as to allow them to consider their respective contracts repudiated, and the requested documentation is relevant.

[3] The defendants, Currie and O'Brien, apply for an order requiring the plaintiff to file and produce certain documents.

[4] The plaintiff, ACI Technologies, says the requested documentation is not relevant to the issues in the proceeding or, if the documents are relevant, they involve confidential proprietary information and should be the subject of a confidentiality order.

[5] Bateman, J.A., in giving the Court of Appeal's decision in *Securicor Canada Ltd. v. Dowling et al.* (2004), 221 N.S.R. (2d) 79, stated at p. 81:

> The case law in this province consistently endorses a liberal interpretation of the *Civil Procedure Rules* and, in particular, those *Rules* encouraging pre-trial disclosure. In *McCrea et al. v. Historic Properties Ltd. et al.*, [1988] N.S.J. No. 449; 89 N.S.R. (2d) 201; 227 A.P.R. 201 (C.A.), Clarke, C.J.N.S. wrote, for the Court:
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> > In *Imperial Oil Limited v. Nova Scotia Light and Power Co. Ltd.* (1974), 10 N.S.R. (2d) 679; 2 A.P.R. 679, Coffin, J.A., speaking for this court, at p. 691, affirmed the principle that Civil Procedure Rule 20.01 is to be given a liberal or wide construction. In *McCarthy v. Board of Governors of Acadia University* (1976), 22 N.S.R. (2d) 381; 31 A.P.R. 381, Chief Justice Cowan stated at p. 385,
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> > > It will be seen, by reference to r. 20.01(1) that the test as to whether or not a document is to be listed is whether it is a document relating to any matter in question in the proceeding.

> The reason for giving a liberal interpretation in the application of rule 20.01 is to provide a full disclosure to the parties on matters in issue and thus assist in the disposition of issues before or at trial. It is also intended to permit a party to test the validity of the allegations being advanced. (See Richard, J., in *I.A.S. Computer Corp. Ltd. v. Mandala Systems Ltd., Read Restaurants Ltd. and Butler* (1980), 40 N.S.R. (2d) 541; 73 A.P.R. 541 at pp. 544-545; Hallet, J., in *Sydney Steel Corporation v. Mannesmann Pipe and Steel Corporation* (1985), 69 N.S.R. (2d) 389; 163 A.P.R. 389, at p. 398.)

[6] And in dealing with relevancy at the document disclosure stage, Bateman, J.A. stated at p. 82:

> Documents which are ultimately found not to be relevant to the resolution of the issues at trial, may, on a review of the pleadings, at an early stage, be considered appropriate for inclusion in the list of documents as satisfying the general test of "relating to every matter in question in the proceeding." (Civil Procedure Rule 20.01)

[7] It is difficult for a Chambers' judge to determine what is relevant to the issues pleaded. As Griffiths, J. said in *Toronto Board of Education Staff Credit Union Ltd. v. Skinner et al.* (1984), 46 C.P.C. 292 at p. 296:

> The Court cannot at this stage lay down precise rules as to what is or is not relevant to the issues pleaded. If, however, the documents have a semblance of relevancy, they should be declared producible, leaving it to the trial Judge or the Judge hearing the final application to make the determination of relevancy at that time. ...

[8] Do the documents requested have a "semblance of relevancy" to the issues in this proceeding?

[9] I find the requested documents do have a semblance of relevancy to the issues in this proceeding. For example, the statement of claim puts the issue of the confidential information clearly in issue.

[10] The plaintiff asks if I find the documents are relevant, I make a confidentiality order. I was referred to various cases, including *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522.

[11] In his affidavit, Ross Tyrell, C.E.O. of the plaintiff, stated at para. 4:

> In order to protect confidential propriety information and trade secrets relating to, among other things, pricing strategy, ACI Technologies and outside third parties such as manufacturers have entered into agreements containing confidentiality and ethics provisions. As a result, all proprietary pricing information is disclosed in the strictest of confidence between ACI Technologies and outside third parties such as manufacturers.

[12] Mr. Tyrell continues in his affidavit to say certain information was restricted to identified employees and Messrs. Currie and O'Brien did not have access to certain information. That lack of access does not determine whether documents are to be disclosed, nor is there evidence before me to show the requested documents are of such a nature as to meet the test set out in *Sierra Club of Canada*, *supra,* for a confidentiality order. It is not clear from Mr. Tyrell's affidavit if the confidentiality agreements mentioned in paragraph four of his affidavit relate to the documents referred to in paragraph five of his affidavit or the requested documents.

[13] This is not an appropriate case for a confidentiality order. The documents are subject to the implied undertaking rule.

[14] I grant the application and order the production sought.

[15] I award costs in the amount of $750.00 in the cause.

Coughlan, J.