SUPREME COURT OF NOVA SCOTIA

Citation: *Barrington Wealth Partners Inc. v. IDC Worldsource Insurance Network Inc.*, 2022 NSSC 172

Date: 20220622
Docket: Hfx No. 509050
Registry: Halifax

Between:

Barrington Wealth Partners Inc.

Plaintiff

v.

IDC Worldsource Insurance Network Inc., Finlay Wark Anthony Wealth Management, Matthew Anthony, William Finlay, and John Wark

Defendants

Decision

Judge:	The Honourable Justice Denise Boudreau
Heard:	May 11, 2022, in Halifax, Nova Scotia
Counsel:	Robert Mroz, for the Plaintiff W. Harry Thurlow and Matt McEwen, for the Defendant IDC Worldsource Insurance Network Inc. Tracey S. Smith, for the Defendants Finlay Wark Anthony Wealth Management, Matthew Anthony, William Finlay, and John Wark

By the Court:

[1] The defendants have brought motions to this Court seeking that the plaintiff's action against them be dismissed, stayed, or transferred to British Columbia on the following grounds:

(a) the action is an abuse of process;

(b) the Supreme Court of Nova Scotia does not have jurisdiction to hear this matter; or

(c) Nova Scotia is *forum non conveniens.*

Facts

[2] The individual defendants Matthew Anthony, William Finlay, and John Wark (the "advisor defendants") are all financial advisors and are all residents of British Columbia. At one point in time, they were employed by a financial services company in Vancouver called ZLC Financial Ltd. ("ZLC").

[3] ZLC is a British Columbia company; part of its business is to act as an insurance brokerage. It sells Manulife insurance products through a Managing General Agent ("MGA"). An MGA is a mandatory requirement in conducting this type of business. ZLC's primary MGA is the plaintiff Barrington Wealth Partners

Inc. (“Barrington”), which is a company registered and doing business in Lower Sackville, Nova Scotia. Garry Zlotnik, who is also a resident of British Columbia, is the chairman and CEO of ZLC, as well as the president and CEO of Barrington.

[4] When a client purchases an insurance product through these entities, various forms of commissions are paid to the various parties involved, in various ways. For example, commissions on sales of segregated funds are paid from Manulife to Barrington; Barrington then pays a commission to ZLC.

[5] Barrington is also involved as a holder of information. Changes to client information or holdings are processed by their office.

[6] The advisor defendants left their employ with ZLC in September 2019 and opened their own company, the defendant Finlay Wark Anthony Wealth Management (“Finlay Wark”). This new company would be a direct competitor to ZLC.

[7] Each advisor defendant then entered into a separate agreement with the defendant IDC Worldsource Insurance Network Inc. (“IDC”), who would act as their new MGA. IDC is also a company registered and doing business in Nova Scotia.

[8] Following these events, IDC then requested that certain clients' business be transferred from Barrington to themselves. This resulted in a dispute which, in essence, forms the basis for this entire litigation. Barrington argued that proper process had not been followed, and that moneys were owing to them. Certain individual clients then moved their business from ZLC to the advisor defendants' new company. The transfers were accomplished by way of a series of block AOR (agent of record) transfers. Barrington disputed these transfers, noting that, in their view, they were owed fees which had not been paid.

[9] Barrington filed its Notice of Action and Statement of Claim with the Supreme Court of Nova Scotia on September 16, 2021 (the "NS claim"). Barrington argued in this claim:

> 21. Barrington Wealth states that the Defendants, or several of them, knowingly and purposefully breached the accepted industry practices established by Carriers with respect to the orderly and proper transfer of business as between MGAs.
>
> 22. Barrington Wealth states that the Defendants, or several of them, have tortiously interfered with its economic and/or contractual relations with other parties, including, *inter alia*, the relevant Carrier(s), with which Barrington Wealth had an MGA agreement, and ZLC, with which Barrington Wealth had the AGA agreement.
>
> 23. Barrington Wealth states that the actions of the Defendants, or several of them, constitute tortious conspiracy, designed to harm the business interests of Barrington Wealth by depriving it of the acquisition fees to which it is legally entitled, and which have instead been retained by IDCWIN and/or the remaining Defendants.
>
> 24. Barrington Wealth states that the Defendants, or several of them, have been unjustly enriched at the expense of Barrington Wealth, which has suffered a corresponding deprivation.

> 25. Barrington Wealth states that the Defendants' conduct has caused it to suffer losses.
>
> 26. Barrington Wealth claims against the Defendants, jointly and severally, for the following relief:
>
> > (i) An accounting of any and all business transferred to IDCWIN from Barrington Wealth;
> >
> > (ii) Special damages, which are estimated to exceed $230,000;
> >
> > ….

[10] However, prior to that filing, ZLC had already filed a claim in British Columbia (the "BC claim") against the same defendants (along with two other defendants: JVR Wark and Associates (which appears to be another company of advisor defendant John Wark) and 1223360 B.C. Ltd. (again, another company of the advisor defendants)).

[11] The BC claim was filed January 27, 2020 (and was amended in March 2021). In it, ZLC seeks damages for the losses it has allegedly suffered, in respect of this very same factual dispute. ZLC takes the position that they are owed money/commissions from the defendants in relation to transfer of this same block of business, from ZLC/Barrington, to Finlay Wark/IDC.

[12] The active pleading in the BC claim contains the following allegations (it should be noted that in the BC claim, the defendant IDC is referenced as "Worldsource"):

39. In breach of their Advisor Agreements and the Key Terms, on or about September 20, 2019, the Advisors, along with two staff, tendered their resignation from their positions with ZLC, with immediate effect. The following business day, a third staff member resigned.

40. The Advisors, individually and/or in conjunction with each other, in breach of the Advisor Agreements and the Key Terms failed to give proper notice of termination pursuant to their Contracts.

41. In breach of the Advisor Agreements and the Key Terms, the Advisors and each of them engaged in a business competitive to ZLC's business prior to September 20, 2019 and commenced operations the next business day.

42. The Advisors, individually and/or in conjunction with each other, in breach of the Advisor Agreements and the Key Terms, took, without permission, confidential information of ZLC prior to resignation and used such information to solicit business from ZLC.

43. In breach of the Advisor Agreements and the Key Terms, the Advisors and each of them solicited staff of ZLC to leave ZLC and work for their new company and made agreements with staff of ZLC while retained by ZLC.

44. In breach of the Advisory Agreements and the Key Terms, the Advisors and each of them unlawfully used and removed confidential information from ZLC to commence their business, employ staff of ZLC, contact clients and improperly seek to take commissions of ZLC, through 1223360 and FWA Wealth or otherwise.

45. In breach of the Advisory Agreements and the Key Terms, the Advisors and each of them in association with 1223360 and/or FWA Wealth made a request through Worldsource that contracts placed through Barrington be moved to Worldsource and further refused to confirm that they would honour the commissions to be paid by ZLC pursuant to such contracts.

46. In breach of the Advisory Agreements and the Key Terms, the Advisors and each of them have transferred Mutual Fund contracts to a new dealer without identifying ZLC as being entitled to commissions and further refused to confirm that they would honour the commissions to be paid by ZLC pursuant to such contracts.

47. Further, in breach of the Advisory Agreements and the Key Terms, the Advisors and each of them unlawfully used and removed confidential information from ZLC to divert clients from ZLC.

48. The Advisors owed ZLC a duty of good faith and honesty. In breach of the Advisor Agreements and the Key Terms, the Advisors and each of them failed to act in good faith and honesty while retained by ZLC or at the time of termination.

49. Further, the Advisors conspired with each other to breach their Advisor Agreements and Key Terms by:

(a) engaging in a business competitive to ZLC's business both before and after the resignation on September 20, 2019;

(b) incorporating 1223360 B.C. Ltd. for the purposes of commencing a competing business while working for ZLC;

(c) soliciting and entering into employment agreements and/or agreements to employ staff of ZLC while working for ZLC;

(d) improperly and systematically taking and using ZLC confidential information;

(e) soliciting ZLC clients to their new business while still working for ZLC;

(f) orchestrating a group resignation and failing to provide due and proper notice;

(g) improperly diverting business from ZLC;

(h) unlawfully requesting through Worldsource that contracts placed through Barrington be moved to Worldsource and further refusing to confirm that they would honour the commissions to be paid by ZLC pursuant to such contracts;

(i) failing to provide proper and adequate notice of resignation;

(j) purposely intending to interfere with the economic relations of ZLC; and

(k) denying the commission agreements of the contracts placed through ZLC and the agreements relating to the same as found in their Contracts.

….

51. In breach of the Advisor Agreements and the Key Terms, the Advisors entered into discussions with Worldsource in or about June 2019 with the intent and purpose to improperly solicit business from ZLC, improperly use confidential information of ZLC and improperly move business from ZLC.

52. Worldsource was aware that ZLC was paid the commissions for placed business contracts on the business that the Advisors sought to move to Worldsource and that the Advisors received their commissions as a result of their Advisor Agreements and Key Terms with ZLC.

53. Worldsource was aware that ZLC was entitled to commissions, renewal commissions and trailers on business placed through ZLC.

54. Worldsource was aware that when blocks of business move from one MGA to another, the receiving MGA pays the relinquishing MGA an acquisition fee equal to a set multiple of the annual service fees and a percentage of the segregated fund assets under administration.

> 55. Worldsource and the Advisors, individually and/or in conjunction with each other, in breach of the Advisor Agreements and Key Terms and in breach of industry practice, conspired to improperly solicit business, improperly use confidential information and improperly move business from ZLC for the purpose of denying a commission payment to Barrington and to interfere with the ordinary and proper transfer of segregated fund business.
>
> 56. Worldsource and the Advisors, individually and/or in conjunction with each other, in breach of the Advisor Agreements and Key Terms and in breach of industry practice, conspired to improperly solicit business, improperly use confidential information and improperly move business from ZLC contrary to industry standards, one client at a time, with the purpose of interfering with and denying ZLC commissions, renewals and trailers.
>
> 57. Worldsource conspired with the Advisors to develop and participate in a scheme which included: denying Barrington their commission payment, contrary to accepted industry transfer protocol standards, and providing an incentive payment to the Advisors in an amount equal to what they would have paid Barrington; incentive payments paid in a manner contrary to industry practice, for the individual transfer of clients from ZLC; and assisted in facilitating the transfer of business in a manner which breached the Advisor Agreements and Key Terms.
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> 58. Worldsource purposely halted an automatic process in place by insurers to facilitate and account for the ordinary and proper transfer of business between MGAs and payment of commissions.
>
> 59. In breach of their Advisor Agreements and the Key Terms, the Advisors and Worldsource have denied ZLC's right to commissions owed to ZLC and their right to trailer fees as per the Contracts.
>
> …
>
> (emphasis added)

[13] Under "Relief Sought", ZLC itemizes a long list. It seeks declarations that all of these breaches occurred, plus Orders in relation to commissions to the advisor defendants. It also seeks the following:

> 16. An accounting by Worldsource of any and all business transferred to Worldsource from Barrington and any commissions earned by Worldsource and/or paid to the Advisors or any of them and an identification of the codes assigned by Worldsource to these contracts;

[14] This particular relief is also sought in the NS claim (at paragraph 26(i)). As noted hereinabove, the NS claim then goes on to seek special damages for Barrington's losses at paragraph 26(ii) (presumably, based on the accounting at paragraph 26(i)).

[15] There are, practically speaking, two significant differences between the two actions: first, the BC action is broader than the NS action, and makes additional allegations against the defendants; second, Barrington is not a named party in the BC action (although it is named in the pleadings).

[16] I have underlined other areas in the BC claim where ZLC raises alleged wrongdoing done to Barrington by the defendants. As I have already noted, Barrington is not a party to the BC claim. However, as I understand the pleading, these references relate to the fact that, in the normal operation of these businesses, there is a "trickle-down" hierarchy of commission payments that occurs when a client purchases a product. Barrington receives the first commission payment from Manulife; Barrington then distributes a commission payment amount to ZLC (who then, presumably, pays a commission amount to the advisor). In other words, in the present case, since Barrington did not receive their commission payment, neither did ZLC.

[17] As I have already noted, the BC claim is broader in scope than the NS claim, and alleges more wrongdoing than the NS claim. Many of the additional allegations in the BC claim relate to the fact that the advisor defendants were directly employed by ZLC. Therefore, ZLC's claims against them encompass much more alleged "tortious activity" than does Barrington's claim against these same people.

[18] But having said that, the BC claim relates to exactly the same basic factual scenario, and dispute, as in the NS claim.

[19] According to the parties, the BC claim is quite well advanced. Disclosure is complete, discoveries have been held, and the case is set for trial in May/June 2023. The NS claim was only recently filed (September 2021), and very little of substance has been accomplished.

Position of the parties

[20] In the present motion, it is the submission of all defendants that the NS claim is substantially the same as the BC claim and, therefore, the NS claim should be dismissed or stayed. The defendants argue that the NS claim is an abuse of process, filed simply as a "strategic ploy" on the part of ZLC/Barrington to vex the

defendants by filing multiple lawsuits against them in respect of the same facts/dispute/claim.

[21] Alternatively, all defendants argue that the Supreme Court of Nova Scotia is without jurisdiction, and that the NS claim should be dismissed. In the further alternative, the defendants submit that Nova Scotia is not the *forum conveniens* to hear this matter, and that the NS claim should be transferred to British Columbia (possibly to be heard concurrently with the BC claim).

[22] Barrington disagrees. It acknowledges that the NS claim and the BC claim have issues in common, but submit that the two claims are substantively different: the claimants are different, the alleged breaches are different (to a large extent), and the relief sought is different. Barrington points out that it is a separate company from ZLC, with separate roles and contractual entitlements within this factual scenario.

[23] Barrington further notes that it is a registered Nova Scotian company, which carries on its business in Nova Scotia. In its view, that makes Nova Scotia the appropriate forum for this litigation.

Abuse of process

[24] Abuse of process is dealt with in Rules 88.01 and 88.02 of the Civil Procedure Rules:

> **88.01 Scope of rule 88**
>
> (1) These Rules do not diminish the inherent authority of a judge to control an abuse of the court's process.
>
> (2) This Rule does not limit the varieties of conduct that may amount to an abuse or the remedies that may be provided in response to an abuse.
>
> **88.02 Remedies for abuse**
>
> (1) A judge who is satisfied that a process of the court is abused may provide a remedy that is likely to control the abuse, including any of the following:
>
> (a) an order for dismissal or judgement;
>
> (b) a permanent stay of proceeding, or of the prosecution of a claim in a proceeding;
>
> (c) a conditional stay of a proceeding, or of the prosecution of a claim in a proceeding;
>
> (d) in order to indemnify each other party for losses resulting from the abuse;
>
> (e) an order striking or amending the pleading;
>
> (f) an order expunging an affidavit or other court document or requiring it to be sealed;
>
> (g) an injunction preventing a party from taking a step in a proceeding, such as making a motion for a stated kind of order, without permission of a judge;
>
> (h) any other injunction that tends to prevent further abuse.

[25] The Rule does not set out, in any specific terms, the type of scenarios which might constitute an abuse of the court's process. Caselaw has established that an abuse of process is made out when proceedings are "oppressive or vexatious" or "bring the administration of justice into disrepute" (*Toronto (City) v. C.U.P.E.,*

Local 79, 2003 SCC 63; *Innocente v. Canada (Attorney General)*, 2012 NSSC 309).

[26] Generally speaking, an attempt by a party to litigate the same issues more than once, either concurrently or subsequently, would qualify as an abuse of process (*ABN Amro Bank Canada v. Wackett*, 1997 NSCA 108; *Canada Life & Health Insurance Compensation Corporation v. Blue Cross of Canada*, 1997 NSCA 27). To allow such a procedure would clearly violate the integrity of the administration of justice, the finality of court proceedings, and the oft-stated policy that litigants should not be "twice vexed by the same cause".

[27] As I previously noted, all defendants submit that the NS claim is an abuse of process, as it is essentially a duplication of an action already proceeding in British Columbia. While the defendants acknowledge that the plaintiffs are not exactly the same in both actions, they point out that these two plaintiffs are intimately related companies with the same directing mind (Mr. Zlotnik), and that their claims are intimately tied with each other. Barrington disputes the defendants' assertion that the NS claim is duplicative of the BC claim, and disputes that the NS claim represents an abuse of process.

[28] It is clear that the NS claim and the BC claim involve the same factual scenario, as well as many of the same parties. It is also clear that, although the BC claim is broader and encompasses more alleged wrongdoing on the part of the defendants, the facts/allegations relating to the NS claim would be entirely or largely contained within that larger BC claim. In other words, if these matters were to proceed, the Nova Scotia court might not hear all of the evidence that the British Columbia court would hear, but the reverse is not true. The British Columbia court would have to hear the evidence in relation to Barrington's entire involvement (and claim), since it is part of their greater factual picture.

[29] There is no question in my mind that if both claims were to proceed, two courts would be doing, in large measure, the same work, and hearing much of the same evidence. For example: both would hear how the advisor defendants left ZLC; how and under what circumstances clients' business was transferred to Finlay Wark/IDC from ZLC/Barrington; what (if any) commissions should have been paid to ZLC/Barrington as a result of these transfers.

[30] Thereafter, two courts will need to make factual findings about that same evidence. Two courts will need to make conclusions about liability on the basis of those findings; for example, whether the actions of any of these defendants represented a breach of common law duties, or industry practice.

[31] Having said that, there are differences between the two actions.

[32] Most notably, the claimant(s), and the moneys claimed, are (at least on their face) different. I do not dispute the defendants' submission that ZLC and Barrington are "connected " companies, and that their commissions are also "connected", since they flow directly from each other.

[33] However, in the context of these two lawsuits, each company is claiming for different money, i.e., each claims only their own commissions. In the BC claim, ZLC seeks (in part) the commission moneys that it should have received. Barrington is not a claimant in British Columbia; therefore, the BC claim will not result in orders allowing Barrington to collect any money.

[34] In the NS claim, Barrington pursues only those commissions that it says it is owed, within this same factual scenario. I see no reason why it should not be entitled to pursue its own claim for those.

[35] Having said all of that, I cannot disagree that it is somewhat curious that, rather than join the existing, fulsome, and quickly advancing BC claim, Barrington has chosen to start a stand-alone claim in Nova Scotia. However, I am not prepared to conclude that this choice was purposefully meant to be vexatious, or that the two actions are duplicative to the point of being abusive.

[36] I am not persuaded that the NS claim represents an abuse of process.

Jurisdiction of Nova Scotia Supreme Court

[37] Civil Procedure Rule 4.07 states:

> **4.07 Lack of jurisdiction**
>
> (1) A defendant who maintains that the court does not have jurisdiction over the subject matter of an action, or over the defendant, may make a motion to dismiss the action for want of jurisdiction.
>
> (2) A defendant does not submit to the jurisdiction of the court only by moving to dismiss the action for want of jurisdiction.

[38] Territorial competence is dealt with in the C*ourt Jurisdiction and Proceedings Transfer Act*, SNS 2003 (2nd Sess.), c. 2, (the "*Act*") at s. 4:

> 4. A court has territorial competence in a proceeding that is brought against a person only if
>
> (a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counter-claim;
>
> (b) during the course of the proceeding that person submits to the court's jurisdiction;
>
> (c) there was an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding;
>
> (d) that person is ordinarily resident in the Province at the time of the commencement of the proceeding; or
>
> (e) there was a real and substantial connection between the Province and the facts on which the proceeding against that person is based.

[39] All parties agree that sections (a) through (c) are not applicable here.

[40] The defendant IDC is ordinarily resident in Nova Scotia. This Court has jurisdiction over the claim against IDC by the application of s. 4(d) of the *Act.*

[41] The other defendants are all residents of British Columbia; the only possibility for this Court's jurisdiction over the proceeding against them is found at s. 4(e) (the "real and substantial connection").

[42] As to that issue, I also note s. 11 of the *Act*:

> 11 Without limiting the right of the plaintiff to prove other circumstances that constituted a real and substantial connection between the province and the facts on which a proceeding is based, a real and substantial connection between the Province and those facts is presumed to exist if the proceeding
>
> (a) is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in a movable or immovable property in the Province;
>
> …
>
> (e) concerns contractual obligations, and
>
> i. the contractual obligations, to a substantial extent, were to be performed in the Province;
>
> ii. by its express terms, the contract is governed by the law of the Province;
>
> iii. the contract
>
> a. is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and
>
> b. resulted from a solicitation of business in the Province by or on behalf of the seller;
>
> …
>
> (h) concerns a business carried on in the Province;
>
> …

[43] The defendants argue that in the present case, there exists no real and substantial connection between Nova Scotia and the facts of this case. They submit

that none of the factors in s. 11 of the *Act* are engaged. They further note that any and all substantive events took place in British Columbia, and that if there were any breaches (which they deny), those breaches took place in British Columbia.

[44] Barrington responds that it is registered as a Nova Scotian company, and it carries on business within this province. As such, interactions with it should presumptively provide a real and substantial connection to Nova Scotia by the operation of s. 11(h) of the *Act* (see *Armco Capital Inc. v. Armoyan*, 2010 NSSC 102).

[45] Barrington further notes that its involvement in this factual scenario was crucial, as the Manulife insurance products could not have been sold without its involvement in those sales, as the MGA. The "Barrington/Nova Scotian" connection was essential to the process, and therefore should be considered real and substantial.

[46] The affidavit of Kim Gray, VP of operations of Barrington, explains Barrington's actual involvement in these transactions:

> 7. Barrington carries on business as a managing general agent (MGA). As an MGA, Barrington acts as an agent or broker in connection with the sale of financial products, including insurance policies and segregated funds, by insurance companies and mutual fund companies ("**Carriers**") to distributors of those financial products.
>
> …

> 14. As an MGA for Manulife, Barrington helps Manulife bring its financial and insurance products to consumers. Barrington accomplishes this through its network of member firms, which are shareholders of Barrington. Those member firms distribute financial and insurance products to the consumers.
>
> …
>
> 19. As a member firm, ZLC is, among other things, required to place all sales of Manulife products through Barrington. In turn, Barrington relays the application materials or sales information to Manulife. Barrington and ZLC then each receive a commission payment in relation to the business placed with Manulife, assuming the sale is completed, in amounts predetermined in accordance with certain rate schedules maintained by Manulife. Those payments, when it comes to segregated funds, come directly from Manulife to Barrington, which in turn pays commission to ZLC. If a product is renewed, ZLC and Barrington would also receive commissions on that transaction.
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> …
>
> 25. ZLC exclusively uses Barrington as the MGA for the sale of Manulife products. This has been the case for many years, since at least 2008. All sales of Manulife products generated by ZLC over that time in respect of which Barrington acts as MGA have been placed through the Barrington offices in Lower Sackville, Nova Scotia.
>
> …
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> 28. Since approximately 2008, Barrington employee Angela Pennell (who works from Lower Sackville, Nova Scotia) and her sales/new business team (all of whom work from Nova Scotia) have been responsible for liaising between ZLC and Manulife on the sale of Manulife products by ZLC advisors. Since approximately 2008, Ms. Pennell and her team would have processed every one of ZLC's sales of Manulife products in respect of which Barrington would have provided its MGA services.
>
> …
>
> 30. For all Manulife segregated funds in respect of which Barrington acted as MGA, any changes to either client information or investment holdings are made in Barrington's Nova Scotia office by Barrington employees. This includes the processing of any Letters of Intent, which are the documents used to request changes which may or may not involve commissions.
>
> (emphasis added)

[47] It is not entirely clear to me whether Barrington's involvement is more or less "administrative" in nature. The use of the words "Barrington relays the

application materials…to Manulife" and that Barrington's employees "would have processed" sales information, appears to suggest that Barrington's role in these transactions is as a "go-between" for information, documents, and commissions, between Manulife and ZLC. The evidence is unclear as to whether Barrington has any "decision making" function in this process.

[48] Put another way, it is not clear to me, in the context of the present action, whether any significant events actually occurred in Nova Scotia.

[49] Section 4(e) of the *Act* requires the showing of both a "real" and "substantial" connection. Frankly, in my view, there is precious little connection between "the facts on which th[is] proceeding against the[se] defendants is based" and the province of Nova Scotia. The defendants have made very compelling arguments that Nova Scotia is without jurisdiction in this matter, and I have considered them carefully.

[50] In the final analysis, however, I feel somewhat bound by the presumption at s. 11(e) of the *Act* which, at least on its face, seems to have application. I must acknowledge that the present matter does concern, in the broadest of terms, "a business carried on in this province". I therefore conclude that the Supreme Court

of Nova Scotia does have jurisdiction over the present action, as against all defendants.

Forum Non Conveniens

[51] A court with jurisdiction over a matter may decline to exercise it in favour of another, more appropriate, forum. The onus is on the party seeking such a result (*Club Resorts Ltd. v. Van Breda*, 2012 SCC 17; *3289444 Nova Scotia Limited v. R.W. Armstrong & Associates Inc.*, 2018 NSCA 26).

[52] I quote from s. 12 of the *Act* (which codified the accepted common law principles):

> 12(1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.
>
> (2) A court, in deciding the question of whether it or a court outside the Province is the more appropriate forum in which to hear proceeding, must consider the circumstances relevant to the proceeding, including
>
> (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum;
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> (b) the law to be applied to issues in the proceeding;
>
> (c) the desirability of avoiding multiplicity of legal proceedings;
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> (d) the desirability of avoiding conflicting decisions in different courts;
>
> (e) the enforcement of an eventual judgement; and
>
> (f) a fair and efficient working of the Canadian legal system as a whole.

[53] I shall look at each of these factors in turn.

(a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum

[54] There can be no doubt that all (or the overwhelming majority) of the substantive events in this proceeding occurred in British Columbia. The majority of the witnesses who will be required to give evidence, reside in British Columbia.

[55] All parties, except for IDC and Barrington, are located in British Columbia. Interestingly, even though IDC operates in Nova Scotia, it joins with the other defendants in arguing that Nova Scotia is not the *forum conveniens*.

[56] Barrington, the plaintiff company, is registered in Nova Scotia. It is the only party that argues that Nova Scotia is the *forum conveniens*. It submits that it (and its witnesses) will be inconvenienced if the matter is heard in British Columbia.

[57] It should be noted, however, that the president and CEO of Barrington (Mr. Zlotnik) is a resident of British Columbia.

[58] It is, quite simply, not possible that all inconvenience to all parties be eliminated. The law in relation to *forum non conveniens* addresses the reality that, in any case where parties/witnesses are located in multiple jurisdictions, a choice will need to be made about where that case should be heard. The Court will address such a motion with a view towards fairness, as well as the orderly

adjudication of the dispute (*Haaretz.com v. Goldhar*, 2018 SCC 28). The lessening of inconvenience, as much as is possible, is the object of the exercise.

[59] In the present case, it is entirely obvious that the vast majority of the participants, parties and witnesses alike, would be inconvenienced if the matter proceeded in Nova Scotia. It would be entirely more convenient for the matter to be heard in British Columbia.

(b) the law to be applied to issues in the proceeding

[60] The parties agree that the law to be applied here would be the law of British Columbia. That factor would also weigh towards a finding that this dispute should be litigated in that province.

[61] Barrington submits that there is nothing preventing a court in Nova Scotia from applying British Columbia law. It also submits that the applicable laws in the two provinces would be very similar, and perhaps even the same, in any event.

[62] I do not disagree that it would, at least in theory, be possible for a Nova Scotian court to apply British Columbia law. Having said that, it is self-evident that any jurisdiction is best placed to apply its own law. Furthermore, in the context of

a dispute as to *forum conveniens*, the factor at s. 12(2)(b) is clearly seeking an assessment as to which of the suggested jurisdictions is most appropriate.

[63] In the present case, s. 12(2)(b) clearly favours British Columbia as the *forum conveniens.*

(c) the desirability of avoiding multiplicity of legal proceedings

[64] In my view, this factor also militates towards this matter being litigated in British Columbia.

[65] In that jurisdiction, the same fact pattern and (essentially) the same parties are already involved in litigation. The matter is, in fact, well down the path toward trial. The claims in Nova Scotia are an entirely related, but smaller, portion of the more global British Columbia action; further, the claims of both plaintiffs are of the same nature and are to a great extent intertwined.

[66] ZLC has made claims from the defendants on the basis of their employee contracts and/or status, which claims would not involve Barrington. But ZLC has also claimed for the loss of commission payments in the transfer of the Manulife business from Barrington to IDC. As I understand the evidence, these commission payments would normally flow first through Barrington, through to ZLC.

[67] Clearly, if I allow Barrington's claim to proceed in Nova Scotia, a multiplicity of legal proceedings will definitely ensue, in the two provinces, relating to the same dispute(s).

[68] I cannot presume to know how the court in British Columbia would deal with these two actions, if they were both before it. But in my view, this factor still weighs towards British Columbia being the more convenient forum. It is entirely uncontroversial to say that court resources are limited in Nova Scotia and, I am sure, in British Columbia. Both of these cases strike me as ones that will take significant court time and resources, with lengthy and somewhat complex evidence needing to be heard. I have heard nothing in this motion that convinces me that it would be appropriate for courts in two jurisdictions, at opposite ends of the country, to hear and adjudicate this same lengthy and complex story.

[69] If both matters are dealt with in British Columbia, I have no doubt whatsoever that the British Columbia court will deal with both of them, in the best and most efficient way.

(d) the desirability of avoiding conflicting decisions in different courts

[70] My conclusion as to this factor is similar to, and flows directly from, my discussion about factor (c), the multiplicity of proceedings. Once again, it is

entirely clear to me that British Columbia is the more appropriate forum for the NS claim.

[71] As I have repeatedly said, the BC claim is more advanced. It is also more broad than the NS claim, but its fact scenario encompasses the NS claim entirely. The facts relating to the NS claim will need to be heard in their entirety by the British Columbia court, in its adjudication of the BC claim. The British Columbia court will need to make decisions about liability and damages in the context of all the facts, including Barrington's involvement (which was a crucial element in the process). And, as I have already mentioned, the commission payments claimed by ZLC in British Columbia, and the commissions payments claimed by Barrington in Nova Scotia, are intimately intertwined.

[72] If these two claims proceed in separate provinces, it is entirely predictable that two courts, hearing the evidence on two separate occasions and in two separate jurisdictions, could come to different conclusions on any, some, or all of the material issues.

(e) the enforcement of an eventual judgment

[73] This factor does not affect this analysis one way or the other. Any eventual judgments could be enforced, in either situation.

(f) the fair and efficient working of the Canadian legal system as a whole

[74] The BC claim was commenced a few years ago. It encompasses the global fact scenario, and is quite advanced, with disclosure and discovery underway/completed and trial dates set.

[75] Barrington has chosen, for whatever reason, not to join in with that already-established proceeding. It has started an entirely new proceeding here in Nova Scotia.

[76] As I have already indicated, I acknowledge that I find it difficult to understand why Barrington would choose to start a separate action in Nova Scotia, given the entirety of the circumstances. Even though Barrington is registered here, such a process seems inefficient for them; even more so when one notes that Barrington's president and CEO is, himself, also a British Columbia resident.

[77] Having said that, the situation as it presently exists is extremely inefficient and quite unfair for the defendants. The defendants will be forced to respond to the same factual scenario, and many of the same allegations, twice, in two separate and distant jurisdictions across Canada. It seems to me that any reasonable informed member of the public would find Barrington's suggested process quite unfair, and wholly inefficient.

[78] In my view, the only way to achieve the "fair and efficient working of the Canadian legal system as a whole", in this case, is for the NS claim to be transferred to British Columbia. I say this regardless of whether the two claims are consolidated.

[79] It does seem, based on what is before me, that the best and most efficient use of court time would be for this entire dispute/fact scenario to be placed before one court, at one time. Such would provide one consistent and comprehensive result. One might presume that if Barrington's action had been commenced in British Columbia, or if it was now transferred to British Columbia, that it would/will be consolidated with the BC claim.

[80] In any event, and regardless of whether the NS claim is ever formally consolidated with the BC claim or not, it is obvious to me that the *forum conveniens* for the NS claim is British Columbia.

[81] Therefore, I decline jurisdiction over the NS claim brought by Barrington, in favour of British Columbia as its *forum conveniens*. The NS claim should be transferred to that jurisdiction, to be litigated there.

[82] I would strongly encourage all parties to consider a consolidation of this proceeding with the existing BC claim. If formal consolidation is deemed

inadvisable or inappropriate by one or more parties, I would then encourage all parties to consider and discuss any possible alternatives, which would allow the court in British Columbia to best use its time and resources in its adjudication of both of these claims.

[83] I would ask counsel to co-operate on a form of Order. As to costs on this motion, I ask counsel to discuss and attempt to reach agreement. If agreement cannot be reached, I would ask counsel for written submissions within 30 days of this decision.

Boudreau, J.