SUPREME COURT OF NOVA SCOTIA
Citation: *Court v. Court*, 2025 NSSC 303

Date: 20250919
Docket: Hfx No. 536759
Registry: Halifax

Between:

James Court

v.

Sean Court and Irina Khan

DECISION ON INTERLOCUTORY INJUNCTION

Judge:	The Honourable Justice Joshua Arnold
Heard:	August 28, 2025, in Halifax, Nova Scotia
Written Decision:	September 19, 2025
Counsel:	Rory Rogers, K.C., and Sarah Walsh, for the applicant Noah Entwisle and Andrew Kinley, for the respondent

Overview

[1] The Applicant, James Court, and the Respondent, Sean Court, are brothers. They were equal partners in a group of four interrelated companies collectively referred to as the Beaumont Group, in the business of manufacturing and transporting exposition displays. The brothers are still equal partners in three of those companies, the Applicant having resigned from one. Only one of those three remaining companies, Expo Express – a logistics company being run by the Applicant – is really active. The Beaumont Group sold a large facility in Mount Uniacke where they fabricated their products, closed a warehouse in Dartmouth, and the Respondent moved all of the equipment from those two locations to a new facility on Bayne Street. The companies also have equipment in a facility in Los Angeles. Both brothers are involved in separate new companies that manufacture and/or provide the same products as the Beaumont Group's businesses did. Therefore, the Applicant and the Respondent are essentially separately in direct competition with the Beaumont Group.

[2] The Applicant moves for an interlocutory injunction reinstating him as a director in relation to one of the companies, removing the Respondent as a director of all of the companies, instituting the Applicant as sole director of all of the companies, and ordering the return of all company equipment plus giving the Applicant full decision-making authority in relation to that equipment.

[3] Both parties made excellent and thorough submissions in relation to this matter. For the reasons that follow, the Applicant's request for an interlocutory injunction is denied.

Facts

[4] Both parties filed affidavits on this application. In addition to his own affidavit, on which he was cross-examined, James Court submitted affidavits from Brennan Page, Ron Fisher, and Joseph Rout. Sean Court, who was also cross-examined on his affidavit, additionally filed an affidavit from Irina Khan.

[5] The facts are as set out above in the overview. I will expand on the facts as relied on by the parties where necessary in respect of each of the branches of the test.

Requested Order

[6] The Applicant requests the following Order:

> 1. An interlocutory injunction is hereby granted requiring the following actions forthwith:
>
> (a) the Respondent Sean Court shall be forthwith removed as a director and officer of 3289092 Nova Scotia Limited, 4554891 Nova Scotia Limited, 3332389 Nova Scotia Limited, and 3341311 Nova Scotia Limited, respectively (collectively, the "**Beaumont Group**"); and,
>
> (b) the Respondents shall return any and all goods, equipment, and/or other chattels previously in the possession of the Beaumont Group (whether previously located 68 Highway 1, Mount Uniacke, Nova Scotia, 30 Simmonds Drive Dartmouth, Nova Scotia, or another location) to the Beaumont Group at a location to be specified by the Applicant.
>
> 2. The Respondents shall pay costs to the Applicant forthwith in the amount of $ _____.

Jurisdiction

[7] Section 5(1) of the Third Schedule to the *Companies Act* states that "[a] complainant may apply to the court for an order under this Section", specifically for an oppression remedy, as defined at s 5(2):

> (2) If, upon an application under subsection (1) of this Section, the court is satisfied that in respect of a company or any of its affiliates
>
> (a) any act or omission of the company or any of its affiliates effects a result;
>
> (b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner; or
>
> (c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner,
>
> that it is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.

[8] Section 5(3) permits the court to "make any interim or final order it thinks fit", and itemizes specific types of available orders "without limiting the generality of the foregoing" (see ss 5(3)(a)-(n)).

[9] The Third Schedule of the *Act* defines a "complainant" at section 7(5)(b):

> (5) For the purposes of Sections 4, 5, 6 and this Section

> …
>
> (b) "complainant" means
>
> (i) a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a company or any of its affiliates,
>
> (ii) a director or an officer or a former director or officer of a company or of any of its affiliates,
>
> (iia) a creditor of a company or any of its affiliates,
>
> (iii) the Registrar, or
>
> (iv) any other person who, in the discretion of the court, is a proper person to make an application under this Section.

[10] The Applicant meets the definition of a "complainant" under the *Act* by virtue of his shareholding role and his role as a director and officer (current and previous) in the Beaumont Group of companies.

[11] Civil Procedure Rule 41.01 states:

> **41.01 Definitions**
>
> In this Rule,
>
> "interim injunction" and "interim receivership" mean an order for an injunction or receivership effective before a motion for an interlocutory injunction or interlocutory receivership is determined;
>
> "interlocutory injunction" and "interlocutory receivership" mean an order for an injunction or receivership granted on notice of motion and effective before the trial of an action or hearing of an application to which the interlocutory injunction or interlocutory receivership relate;

[12] Therefore, the Applicant has jurisdiction to bring this application.

Three-part test for interlocutory injunctions

[13] Despite numerous authorities being submitted by both parties, many in relation to very discreet issues, the parties essentially agree on the law governing an application for an interlocutory injunction.

[14] It is well settled that there is a three-part test in determining if an interlocutory injunction should be granted as set out in *RJR-MacDonald v. Canada (Attorney General),* [1994] 1 SCR 311:

1. Is there a serious issue to be tried?;
2. Will there be irreparable harm to the applicant if the injunction is denied?;
3. Does the balance of convenience favour granting or denying the injunction?

1. Is there a serious issue to be tried?

Serious issue to be tried vs. Strong prima facie case

[15] As noted by both parties, a significant issue in this case is whether the relief sought is mandatory or restraining/prohibitive. If it is mandatory, then the burden on the applicant is to prove that there is a serious *prima facie* case. If it is prohibitive then the lower burden of a serious issue to be tried applies. In *R. v. Canadian Broadcasting Corporation,* 2018 SCC 5, Brown J. stated for the court:

> [12] In *Manitoba (Attorney General) v. Metropolitan Stores Ltd*. and then again in *RJR — MacDonald*, this Court has said that applications for an interlocutory injunction must satisfy each of the three elements of a test which finds its origins in the judgment of the House of Lords in *American Cyanamid Co. v. Ethicon Ltd*. At the first stage, the application judge is to undertake a preliminary investigation of the merits to decide whether the applicant demonstrates a "serious question to be tried", in the sense that the application is neither frivolous nor vexatious. The applicant must then, at the second stage, convince the court that it will suffer irreparable harm if an injunction is refused. Finally, the third stage of the test requires an assessment of the balance of convenience, in order to identify the party which would suffer greater harm from the granting or refusal of the interlocutory injunction, pending a decision on the merits.
>
> [13] This general framework is, however, just that — general. (Indeed, in *RJR — MacDonald*, the Court identified two exceptions which may call for "an extensive review of the merits" at the first stage of the analysis.) In this case, the parties have at every level of court agreed that, where a *mandatory* interlocutory injunction is sought, the appropriate inquiry at the first stage of the *RJR — MacDonald* test is into whether the applicants have shown a strong *prima facie* case. I note that this heightened threshold was not applied by this Court in upholding such an injunction in *Google Inc. v. Equustek Solutions Inc*. In *Google*, however, the appellant did not argue that the first stage of the *RJR — MacDonald* test should be modified. Rather, the appellant agreed that only a "serious issue to be tried" needed to be shown and therefore the Court was not asked to consider whether a heightened threshold should apply. By contrast, in this case, the application by the courts below of a heightened threshold raises for the

first time the question of just what threshold ought to be applied at the first stage where the applicant seeks a mandatory interlocutory injunction.

[14] Canadian courts have, since *RJR — MacDonald*, been divided on this question. In Alberta, Nova Scotia and Ontario, for example, the applicant must establish a strong *prima facie* case. Conversely, other courts have applied the less searching "serious issue to be tried" threshold.

[15] In my view, on an application for a mandatory interlocutory injunction, the appropriate criterion for assessing the strength of the applicant's case at the first stage of the *RJR — MacDonald* test is *not* whether there is a serious issue to be tried, but rather whether the applicant has shown a strong *prima facie* case. A mandatory injunction directs the defendant to undertake a positive course of action, such as taking steps to restore the *status quo*, or to otherwise "put the situation back to what it should be", which is often costly or burdensome for the defendant and which equity has long been reluctant to compel. Such an order is also (generally speaking) difficult to justify at the interlocutory stage, since restorative relief can usually be obtained at trial. Or, as Justice Sharpe (writing extrajudicially) puts it, "the risk of harm to the defendant will [rarely] be less significant than the risk to the plaintiff resulting from the court staying its hand until trial". The potentially severe consequences for a defendant which can result from a mandatory interlocutory injunction, including the effective final determination of the action in favour of the plaintiff, further demand what the Court described in *RJR — MacDonald* as "extensive review of the merits" at the interlocutory stage.

[16] A final consideration that may arise in some cases is that, because mandatory interlocutory injunctions require a defendant to take positive action, they can be more burdensome or costly for the defendant. It must, however, be borne in mind that complying with prohibitive injunctions can also entail costs that are just as burdensome as mandatory injunctions. While holding that applications for mandatory interlocutory injunctions are to be subjected to a modified *RJR — MacDonald* test, I acknowledge that distinguishing between mandatory and prohibitive injunctions can be difficult, since an interlocutory injunction which is framed in prohibitive language may "have the effect of forcing the enjoined party to take . . . positive actions". For example, in this case, ceasing to transmit the victim's identifying information would require an employee of CBC to take the necessary action to remove that information from its website. Ultimately, the application judge, in characterizing the interlocutory injunction as mandatory or prohibitive, will have to look past the form and the language in which the order sought is framed, in order to identify the substance of what is being sought and, in light of the particular circumstances of the matter, "what the practical consequences of the . . . injunction are likely to be". In short, the application judge should examine whether, in substance, the overall effect of the injunction would be to require the defendant to *do* something, or to *refrain from doing* something.

> [17] This brings me to just what is entailed by showing a "strong *prima facie* case". Courts have employed various formulations, requiring the applicant to establish a "strong and clear chance of success"; a "strong and clear" or "unusually strong and clear" case; that he or she is "clearly right" or "clearly in the right"; that he or she enjoys a "high probability" or "great likelihood of success"; a "high degree of assurance" of success; a "significant prospect" of success; or "almost certain" success. Common to all these formulations is a burden on the applicant to show a case of such merit that it is very likely to succeed at trial. Meaning, that upon a preliminary review of the case, the application judge must be satisfied that there is a *strong likelihood* on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice.

[16] As noted by the Respondent in its brief, the caselaw indicates that the Applicant will be required to satisfy whether there is a "serious *prima facie* case" in certain situations, depending on the nature of the remedy sought:

> 91. Canadian jurisprudence has subsequently confirmed that the first stage of the *RJR-MacDonald* test will sometimes require the moving party to satisfy the higher standard of a "serious *prima facie* case." Without limitation, the moving party will be required to demonstrate a serious *prima facie* case where:
>
> (a) the relief sought is "intrusive" or "draconian": *Dymon Storage Corporation v.Nicholas Caragianis,* 2022 ONSC 5883 at para 24
>
> (b) the relief sought is "mandatory" (as opposed to "prohibitive") in that it requires the other party to take affirmative action, e.g., to restore the status quo: *R v. Canadian Broadcasting Corporation,* 2018 SCC 5 at para 15**;** *Peill v. Soil and Sea Co-op Limited,* 2023 NSSC 286 at para 179, aff'd 2025 NSCA 11**;** and
>
> (c) the relief sought is final, or determinative of the proceeding, such that the trial judge will not be able to undo the effect of the interlocutory injunction at trial: *RJR-MacDonald, supra,* at para 56**;** *Awashish v. Conseil des Atikamekw d'Opitciwan,* 2019 FC 1131 at para 18**.**

[17] In *Tri-Mac Holdings Inc v. Ostrom*, 2018 NSSC 177, A.E. Smith J. stated:

> [33] A number of the claims for relief sought by Brad as a director and Tri-Mac as a shareholder of Public Capital are for interim, mandatory orders:
>
> - The setting aside of certain directors' resolutions;
> - The removal of Greenwood as a director of Public Capital;

- Amending the Memorandum and Articles of Association of Public Capital;
- Requiring Dale personally, or alternatively Public Capital, to pay legal fees and costs relating to directors' meetings, negotiations and preparation of agreements relating to management fees;
- Compelling the interim payment of a distribution by Public Capital to Brad or Tri-Mac.
- Requiring the interim payment of the legal costs of the Applicants.

…

[53] In "Shareholder Remedies in Canada", (2009) 2 ed., at para, 17.192 authors Peterson and Cummings state that "[R]emoving and appointing directors to the board is an extreme form of judicial intervention." The authors further state:

> The board of directors is elected by the shareholders, vested with the power to manage the corporation, and appoints the officers of the company who undertake to conduct the day-to-day affairs of the corporation. It is clear that the board of directors has control over policy-making and management of the corporation. By tampering with a board, a court directly affects the management of the corporation. If a reasonable balance between protection of corporate stakeholders and the freedom of management to conduct the affairs of the business in an efficient manner is desired, altering the board of directors should be a measure of last resort….Exceptions should only be made for cases of extreme abuse where it is clear that the incumbent directors cannot be trusted and the only way to protect the complainants is to remove those directors. (17.192]

[18] The Applicant is asking that 1) the Respondent be removed as a director and officer of all four Beaumont Group companies and for the Applicant to be reinstated/instated as the sole director and officer of the Beaumont Group, and 2) that the equipment that belongs to the Beaumont Group be "returned to Beaumont", that is, taken from the Bayne Street facility and moved to some undisclosed location at the sole direction of the Applicant. Contrary to the position of the Applicant, this a request for affirmative action and therefore for mandatory relief. As a result, the Applicant is held to the higher burden of proving a strong *prima facie* case.

[19] On the evidence presented on this application, it is apparent that both the Applicant and the Respondent are currently separately involved with companies that compete directly with the Beaumont Group. Therefore, the issue of whether

there is a breach of fiduciary duty will be in play at trial in relation to both parties. As stated by Rosinski J. in *Link v. Link*, 2020 NSSC 293:

> [38] Bradley discusses directors' duties at page 57:
>
> **Directors' duties**
>
> The duties owed by Directors to the Corporation they serve can be generally described under three broad categories: the first is the duty of obedience, or the duty to act within one's powers, in compliance with the Act and the constating documents of the company; the second is the duty to act with reasonable care; and the third is to act with the loyalty and good faith of the fiduciary. These duties are not codified explicitly in the NS CA as they are in many other jurisdictions. Rather they are owed [by] directors of NS CA companies exclusively by operation of the common law.… The duties of directors at common law are described in an extensive and complex body of jurisprudence, which Nova Scotia courts have rarely had the opportunity to consider. Accordingly, they can be determined principally by considering older Canadian cases and cases from other jurisdictions such as the UK. Recent Canadian cases may also be relevant to the determination of these duties, but in applying these more modern cases in the context of the NS CA companies, one must remain alert to the fundamental distinction between the duties that arise from the statutory provisions of other jurisdictions, and those that arise from the common law.
>
> The following paragraphs offer a brief summary of these common law duties as they apply to the directors of Nova Scotia Companies.
>
> It is well settled, both at common law and under the BCA statutes, that the duties of a director are owed to the corporation itself, and not to the shareholders or any other constituency.
>
> The duty of obedience is relatively straightforward. The director of a company is obliged to act within the powers granted to him or her by the Act and the constating documents of the company, and to comply with the terms set out therein. …
>
> The common law duty of care imposes an obligation on directors to carry out their work on behalf of the company with the requisite degree of care and skill…
>
> The common law duty of loyalty has a number of components that were summarized by Millet LJ in the leading English case of *Bristol and West Building Society v Mothew*, [1996] 4 All ER 698 (CA), who observed that a director has a duty to 'act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not

> intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are the defining characteristics of the fiduciary. **There is clearly a considerable degree of overlap between the no profit, no conflict and no benefit imperatives, though the underlying premise is also clear: the director must always act in good faith and subordinate his or her own interests to the interests of the company.**
>
> [Emphasis in original]

[20] The evidence presented on this application suggests, among other things, that the Applicant set up a competing company (Müller) within days of resigning as a director of Beaumont Exhibits, landed a lucrative deal with a former employee of Beaumont within days of his resignation, and continues to compete against some aspects of the Beaumont Group's business.

[21] There is no dispute on the evidence presented on this application that the Respondent moved Beaumont's equipment to its Bayne Street facility, used it to finish some of Beaumont's outstanding projects/obligations, and now uses it to manufacture and conduct business for his own companies, which also compete against Beaumont (Traction X and Hempston Home).

[22] Therefore, in relation to allegations of a breach of fiduciary duty, oppression, and/or unfair prejudice on the part of both parties, I am satisfied on the evidence presented on the present application that there is a strong *prima facie* case against both parties. And, there is some evidence that neither party has "clean hands". However, considering my findings in relation to the second and third part of the *RJR* test, because of the significance of these issues at trial, I decline to make a definitive ruling on those facts.

2. Will there be irreparable harm to the applicant if the injunction is denied?

[23] This application mainly rises and falls on this second issue. In *RJR,* Sopinka and Cory JJ., for the court, defined irreparable harm as harm that is not compensable through monetary damages:

> 64 "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision (*R.L. Crain Inc. v. Hendry* (1988), 48 D.L.R. (4th) 228 (Sask. Q.B.)); where one party will suffer permanent market loss or irrevocable damage to its business reputation (*American Cyanamid, supra*); or

> where a permanent loss of natural resources will be the result when a challenged activity is not enjoined (*MacMillan Bloedel Ltd. v. Mullin*, [1985] 3 W.W.R. 577 (B.C.C.A.)). The fact that one party may be impecunious does not automatically determine the application in favour of the other party who will not ultimately be able to collect damages, although it may be a relevant consideration (*Hubbard v. Pitt*, [1976] Q.B. 142 (C.A.)).

[24] This was reiterated in *H & N Enterprises Inc. v. Novocation Inc.,* 2020 NSSC 303, where Norton J. stated:

> [40] In *Injunctions and Specific Performance* (Toronto: Canada Law Book, looseleaf), Sharpe J. provides the following introduction to this issue (at para 2.390, citations excluded):
>
> > An essential factor in determining the appropriateness of an interlocutory injunction is "irreparable harm", a phrase familiar in equity jurisprudence. The remedies of Chancery were traditionally withheld, unless the plaintiff could show that the ordinary legal remedy in damages would be inappropriate or inadequate. **In the context of preliminary injunctive relief, the phrase is given a more specific meaning, namely, that the plaintiff, before the trial, must show an immediate risk of harm that will occur before the case reaches trial and that cannot be compensated or remedied other than through the granting of an interlocutory injunction. The rationale for requiring the plaintiff to show irreparable harm is readily understood. If damages after trial will provide adequate compensation, and the defendant is in a position to pay them, then ordinarily there will be no justification in running the risk of an injunction pending the trial.**
> >
> > In *American Cyanamid*, Lord Diplock restated the need for the plaintiff to show irreparable harm as the second step in his formula. The question to be asked, said Lord Diplock, was the following. Assuming that the plaintiff succeeds in the end in establishing a right to a permanent injunction, will damages be adequate compensation for the loss sustained between the time of the application and the trial? "If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage." If damages are an adequate remedy, running the risk of restraining the defendant unjustifiably pending the trial is simply not warranted.
> >
> > While it is easy to see why the plaintiff should have to show irreparable harm, it is difficult to define exactly what the phrase means.
>
> [Emphasis added]

[41] In *R.J.R.*, *supra*, the Supreme Court of Canada provided guidance as to what constitutes "irreparable harm" at para. 64:

> "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision […]; where one party will suffer permanent market loss or irrevocable damage to its business reputation […]; or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined […]

[42] Referring again to the decision in *Potash, supra*, when evaluating the appropriate standard to be met by a moving party seeking interim relief, the Saskatchewan Court of Appeal held (para. 113):

> ... The general rule here is that the plaintiff must establish at least a meaningful doubt as to whether the loss he or she might suffer before trial if an injunction is not granted can be compensated for, or adequately compensated for, in damages. Put another way, the plaintiff must demonstrate a meaningful risk of irreparable harm. If this is done, the analysis turns to the balance of convenience proper. [Emphasis added.]

[25] In his text, *Injunctions and Specific Performance* (Toronto: Canada Law Book, 2017), Justice Robert Sharpe states that the test for irreparable harm in the context of preliminary relief is a "relative and flexible one":

> § 2:12. Irreparable harm to the plaintiff—Conclusion
>
> It is exceptionally difficult to define irreparable harm precisely. Courts regularly and routinely assess monetary awards for non-pecuniary injuries where it is necessary to do so. On the other hand, the courts have sometimes been prepared to view what otherwise seem readily calculable losses as "irreparable" for the purposes of interlocutory relief.
>
> In the context of preliminary relief, the test is a relative and flexible one which, it is submitted, necessarily involves an evaluation of the other factors. Indeed, it has been held that an interlocutory injunction may be granted even where "irreparable" harm has not been demonstrated. Similarly, attempts to make irreparable harm a condition precedent, and hence a threshold test, have been rejected. These cases suggest that the "irreparable harm" requirement can only be defined in the context of the risk-balancing exercise. If the plaintiff's case looks very strong, harm may appear to be more "irreparable" than where the plaintiff has only an even chance of success. While judges seldom explicitly acknowledge that there is an "overflow" effect produced by strength or weakness of other factors, it cannot be doubted that, as a practical matter, it exists. The important point is that irreparable harm has not been given a definition of universal application: its meaning takes

> shape in the context of each particular case. However it is defined, failure to establish irreparable harm is commonly cited as the primary reason for refusing injunctive relief.

[26] The Applicant says there will be irreparable harm to the Beaumont Group's finances, business, assets, and reputation if the Respondent remains a director and officer of the Beamont Groups. Further, the Applicant submits, his claim will be frustrated because the Beaumont Group may go bankrupt and therefore the companies will cease to exist. On this point, the Applicant points to evidence that the Respondent "has a history of ignoring conflicts of interest and doing as he wishes with the operation and management of the Beaumont Group", and refers to *Hong v Lavy*, 2017 NSSC 329, where the Applicants sought an interim order prohibiting the Respondents from removing one of the Applicants as director and CEO of the relevant company, and prohibiting the Respondents from further depleting the corporate treasury without the Applicants' approval. Edwards J. took the view that, although there were financial aspects to the potential loss, it would be "artificial" to treat it as compensable:

> [87] As I have indicated, I am concerned that Lavy's "scorched earth" style of litigating will see him take Sensio to the financial brink and perhaps beyond. Lavy has demonstrated that his primary focus is defeating Hong. That means forcing Hong out of Sensio. I am concerned that if this Court does not intervene, Sensio (and therefore Hong) may suffer irreversible financial damage.
>
> …
>
> [91] Without this Court's intervention, the likelihood is that Lavy will force Hong to relinquish his interest in Sensio at a fire sale price. That would end this litigation. It is therefore artificial to suggest that Hong's potential monetary loss could be compensated in damages. Hong will have suffered irreparable harm.
>
> [92] The other possibility is that Hong is able to continue but, by the time the battle is over, Sensio itself has suffered irreparable financial damage. Sensio is Hong's main source of money. If Sensio suffers irreparable harm, so does Hong.

[27] The Applicant says in his brief that the same reasoning applies here:

> 120. Although some of the damage that the Applicant seeks to prevent could be monetarily compensated in the abstract, Sean's willingness to drain funds, divert business and redirect assets presents serious barriers of recoverability.
>
> 121. Further, the ongoing diversion of clients will likely permanently erode the Beaumont Companies' market share and viability. This cannot be compensated for

> in monetary damages. The Respondents have already redirected major, long-term clients (e.g. Westgate, Anglo American, Disney, Thales, Tim Hortons, Air Canada) to their competing entities. Such relationships are built over years and are not easily recaptured when lost. Even if damages were recovered at trial, the competitive foothold and brand loyalty the Respondents are creating for their rival companies will not be recoverable by the Applicant.
>
> 122. Traction X is using Beaumont Exhibits' photographs, branding, and marketing materials to promote itself, falsely passing off Beaumont's past work as its own. This is not just a temporary use – its embedding marketing confusion and brand dilution that will likely outlast the litigation. The longer this goes on, the harder it will be to re-establish Beaumont's identity and reputation, even with an award of damages.
>
> 123. Further, with diverted revenue, depleted assets and increasing debt, the Beaumont Group is at imminent risk of insolvency. If the companies fail before trial, any damage award becomes meaningless because the Applicant will have lost his ownership interest, his income source, and the ability to revive the business.

[28] As a result, the Applicant asks this court to grant an order that essentially allows him to do as he wishes with the operation and management of the Beaumont Group. However, as the Respondent points out, the Applicant has not brought a derivative proceeding on behalf of the Beaumont Group, meaning that any irreparable harm must fall to the Applicant personally. Unlike the situation in *Hong v. Lavy*, the Respondent says, "there is no evidence that the Beaumont Group is the Applicant's 'main source of money.' To the contrary, the evidence indicates that the Applicant's primary source of income is Müller, and that this has been the case since at least 2024. This alone defeats the Applicant's allegation of irreparable harm." The Respondent adds that "[p]otential diminution in value of shares does not ground a shareholder's claim for irreparable harm, because this can be compensated for in damages", citing *Salcon Bio-Technologies PTE Ltd. v. International Bio-Recovery Corp.*, 2002 CarswellBC 380, at para 25. The Respondent further says in his brief that the Beaumont Group is not facing an existential crisis, and that the proposed injunction will actually make the situation worse:

> *b. The Beaumont Group does not face an existential crisis*
>
> 128. The Applicant has also failed to prove that the Beaumont Group faces an existential crisis.
>
> 129. The evidence shows that the Beaumont Group has wound down its operations substantially after the inflection point in Fall of 2024 when the

Applicant filed this proceeding and then used Müller to appropriate the Diabetes Canada trade show and other sources of business from Beaumont Exhibits (such as Global).

130. The evidence also shows that while the Beaumont Group had its lease terminated at the 30 Simmonds Drive location, the Applicant has failed to show why this poses an existential threat, especially given that the Respondents' evidence shows that Beaumont Cabinets' and Beaumont Exhibits' equipment are safely and securely stored at the Bayne Street Facility. As for the Beaumont Group's Los Angeles warehouse, arrangements have been made for paying amounts in arrears and staying in the space.

131. The evidence also shows that the Beaumont Group received a notice from CIBC regarding overdue interest payments, and that the Respondents are working with CIBC to resolve this issue. Notably, the Beaumont Group had previously been able to resolve issues related to its CIBC indebtedness with the Applicant's reluctant cooperation.

132. The Applicant has attempted to rely upon a past-due notice from GNS regarding an invoice issued by GNS to Expo Express in relation to services performed for Müller. Needless to say, this does not establish that the Beaumont Group is on the brink of collapse. It shows that the Applicant and Müller are improperly using Expo Express.

133. The Applicant's allegation that Sean has created an existential crisis for the Beaumont Group is significantly undermined by the fact that the Applicant: (a) resigned as director and officer of Beaumont Exhibits in fall 2024 as a result of Sean's alleged misconduct and advertises that he is no longer employed by the Beaumont Group; and (b) waited approximately 10 months to bring the present motion.

134. If the Applicant is so concerned about the emergent harm that Sean is inflicting on the Beaumont Group as director and officer, it begs the question: why did the Applicant resign in protest from his position as director and officer of Beaumont Exhibits in the fall of 2024 and then wait until now to bring his so-called "emergency" motion?

135. On this point, the Respondents refer to the following statement by the Ontario Superior Court of Justice in *Hearing Clinic (Niagara Falls) v. Ellesmere Hearing Centre Ltd.,* 2008 CarswellOnt 7964 (Ont. SCJ) at para 22**:**

> Finally, it must also be noted that there has been considerable delay in bringing this motion forward. The plaintiff was aware of difficulties concerning competing overtures to his alleged client base as early as the spring of 2007, yet did not bring this motion until October 2008. Although it is true that certain pieces of evidence did not surface until recently, that evidence did not suddenly transform the plaintiff's claim to one of urgency justifying interlocutory relief. Delay in injunction cases usually negates or

> undermines allegations of irreparable harm. As stated in Justice Sharpe's text, *Injunctions and Specific Performance,* at para. 1.990:
>
> The very fact of delay by the plaintiff, quite apart from any question of prejudice to the defendant, may often serve as evidence that the risk is not significant enough to warrant interlocutory relief.
>
> [emphasis added]
>
> 136. The significance of the Applicant's delay is underscored by the allegations he made in his Notice of Application in Court filed in September 2024, as amended: see, for example, the grounds listed in his at paragraphs 9, 10, 14-17 therein. The Applicant may argue that he became aware of new evidence recently, but he has exaggerated the significance of this new evidence, as detailed above. Recent developments have not resulted in a meaningful change relative to what was happening in Fall 2024.
>
> *c. The proposed injunction will worsen the Beaumont Group's situation*
>
> 137. Even if the Applicant can establish that the Beaumont Group faces an existential crisis, he must also satisfy the Court that making him the sole director and officer of the Beaumont Group will resolve that crisis. He has not done so. In fact, the opposite is likely true.
>
> 138. If the Applicant assumes control of the Beaumont Group, this will not cause its challenges to disappear. The Applicant has not set out a viable plan for how he will resolve the Beaumont Group's supposed "emergency" situation (the severity of which he greatly exaggerates).
>
> 139. There is little reason to think that the Applicant would act responsibly and scrupulously as the sole director and officer of the Beaumont Group. In fact, the evidence shows that the Applicant helped place the Beaumont Group in its current predicament.
>
> 140. To reiterate, the Applicant neglected the Beaumont Group and travelled the world during a critical period of debt-leveraged growth. He has withdrawn Beaumont funds for his personal ends. He opened (or facilitated the opening) of competing businesses which are staffed by former Beaumont employees and which service former Beaumont clients. He now works full-time for Müller, a direct competitor of Beaumont Exhibits. He has used Expo Express to procure shipping services for Müller without paying for them. This is a non-exhaustive list.
>
> 141. The Respondents respectfully submit that the Applicant has failed to prove that he will suffer irreparable harm if his motion is not granted, and he has failed to prove that the proposed injunction will prevent irreparable harm from occurring. His motion fails on that basis.

[29] I agree with the Respondent. On the basis of the evidence presented on this application, there will be no irreparable harm if the injunction is denied. Any harm

occasioned between now and a final determination at trial is compensable through monetary damages. On this second branch alone, the application fails.

3. Does the balance of convenience favour granting or denying the injunction?

[30] In *RJR*, Sopinka and Cory JJ., described the considerations on the third-part of the test:

> 67 The third test to be applied in an application for interlocutory relief was described by Beetz J. in *Metropolitan Stores* at p. 129 as: "a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits". In light of the relatively low threshold of the first test and the difficulties in applying the test of irreparable harm in *Charter* cases, many interlocutory proceedings will be determined at this stage.
>
> 68 The factors which must be considered in assessing the "balance of inconvenience" are numerous and will vary in each individual case. In *American Cyanamid*, Lord Diplock cautioned, at p. 408, that:
>
> > [i]t would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.
>
> He added, at p. 409, that "there may be many other special factors to be taken into consideration in the particular circumstances of individual cases."

[31] The Applicant says that the "balance of convenience favours the preserving of the Beaumont Group's operations and preventing further diversion of its assets, clients, and goodwill". I agree with that proposition. What has not been proven by the Applicant is that the granting of the injunction and the terms of the suggested order would improve the Beaumont Group's situation. The evidence presented on this application does support some of the allegations made by the Applicant as stated in his brief:

> 128. Sean has already excluded himself from the active management of Beaumont Exhibits and Expo Express and has unilaterally assumed control of Beaumont Cabinets and Beaumont Investments without the Applicant's participation. Removing him as a director and officer simply formalizes the status quo from the Applicant's perspective and prevents further misconduct; it does not impede any legitimate business activities the Respondents are conducting through their rival entities.

> 129. The true “status quo” is the state of affairs before the Respondents began diverting Beaumont’s business and assets in late 2024. The injunction seeks to return to that position, preventing further depletion of corporate resources and allowing the litigation to proceed without the Beaumont Group collapsing in the interim.
>
> 130. Without immediate interlocutory relief, the Respondents will continue to redirect corporate opportunities and assets to their own companies, creating a constantly shifting evidentiary and financial landscape. This increases the complexity and cost of trial, as the Applicant will be forced to trace additional losses, transactions, and diverted contracts that could have been prevented.
>
> 131. The activities the injunction would restrain — diverting business, using Beaumont assets for competitors, withdrawing corporate funds without authorization — are in direct breach of fiduciary and statutory duties. A party cannot claim “inconvenience” from being prevented from engaging in unlawful or oppressive conduct.

[32] The problem for the Applicant is that the evidence presented on this application also supports some of the allegations made by the Respondent in his brief:

> 144. If the Applicant's motion is granted, he will assume sole control of the Beaumont Group and its assets. Given the history between the parties, there is no reason to think that the Applicant will exercise this authority with any consideration for his fiduciary duties or the Respondents' reasonable expectations. Instead, the Applicant will perpetuate his oppression of the Respondents and work to secure competitive advantages for his companies.
>
> 145. Sean in particular will suffer irreparable harm if the Applicant's motion is granted, because it will result in him being removed as the director and officer of the Beaumont Group that he cofounded with the Applicant. The loss of a directorship in the context of an acrimonious dispute over control of a corporate entity has been recognized as a form of irreparable harm: see *Peill v. Soil and* Sea *Co-op Limited, supra,* at paras 193-198:
>
> 146. By contrast, if the Applicant's motion is not granted, things will continue as they have for the past 10-12 months. Hempston Home will continue storing Beaumont Group's equipment at the Bayne Street Facility (without charging the Beaumont Group), and the Respondents will continue working to ensure that the Beaumont Group satisfies any remaining contractual obligations to its debtors and clients. The Applicant, for his part, will presumably continue occupying himself with Müller, Blue Wave, and any other company in which he is involved.

[33] On the evidence presented on this application, granting the requested injunctive relief will not prevent more harm than it causes. As stated by Bryson J.A. in *Schwartz v. HRM*, 2025 NSCA 14:

> [34] *Campbell* puts it this way:
>
> > [18] It sometimes happens that both applicant and respondent can demonstrate that irreparable harm will occur whichever way the court decides. In such cases, the court must go on to consider the balance of convenience. This requires balancing which party will suffer greater harm from the granting or refusal of the injunction (stay) pending a decision on the merits. Again, Lord Diplock in *American Cyanamid*, at 511:
> >
> > > It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.
> > >
> > > Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the *status quo*. ...

[34] In the present case, based on the evidence presented during this application, the "other" factors appear to be evenly balanced, therefore it is "a counsel of prudence" to take such measures as are calculated to preserve the *status quo*. The application fails on this third branch as well.

Conclusion

[35] The Applicant's motion fails in relation to the second and third branch of the *RJR* test. His motion for an interlocutory injunction is denied.

Costs

[36] While the Respondent addressed the issue of costs in detail in his brief, the Applicant simply said that he should receive costs and the Respondent should not. Costs will be ordered in the cause. As to quantum, the parties will have 15 days from the release of this decision to come to an agreement on the appropriate amount. If the parties cannot agree on quantum, I will then set filing dates for written submissions.