Court of King's Bench of Alberta

Citation: People Corporation v 2578649 Alberta Ltd. et al., 2024 ABKB 375

Date: 20240621
Docket: 2401-05026
Registry: Calgary

2024 ABKB 375 (CanLII)

Between:

People Corporation

Plaintiff

- and -

2578649 Alberta Ltd. dba Quinn Advisory Group, Jay Quinn, Tyler Patterson, Selina Metez and Margaret Archer

Defendants

Reasons for Decision
of the
Honourable Justice C.D. Simard

Introduction

[1] The Plaintiff People Corporation ("**People**") commenced this action in April 2024. It is making an application for interim injunction pending trial that will be heard on July 22, 2024 (the "**July Application**"). In this application, People asks for an interim interim injunction against the Defendants, restraining them from soliciting People's clients or employees, providing services to or accepting business from the Plaintiff's clients, and using People's confidential information, until the hearing of the July Application.

[2] In 2018, People bought all the shares (the "**Acquisition**") of Lane Quinn Benefit Consultants Ltd. ("**LQBC**"). Like People, LQBC was in the business of providing group insurance benefits to employers. The Defendant Jay Quinn ("**Quinn**") was the majority shareholder, the CEO and a director of LQBC, and the other individual Defendants were employees of LQBC. In the lengthy negotiations leading up to the Acquisition, the parties, including Quinn, were represented by legal and financial advisors. The purchase price was $20 million: $14 million in cash and $6 million in contingent compensation. After the Acquisition, the individual Defendants became employees of People. People and LQBC amalgamated in February, 2021.

[3] Quinn resigned from his employment with People effective December 31, 2023. He then incorporated Quinn Advisory Group ("**QAG**") in January 2024, and it commenced business, doing the same kind of work as People. The other individual Defendants resigned from People, and then commenced working with Quinn and QAG. People says that Quinn solicited them from their employment with People, contrary to his contractual obligations to People, and his common law and equitable duties. People also alleges that the Defendants have illegally used its confidential information, solicited its clients, and are now competing with it, all of which is contrary to their contractual obligations, common law and equitable duties.

[4] At the time the parties argued the interim interim injunction before me, the Defendants had not yet questioned any of the Plaintiff's affiants, nor filed their own evidence, other than a secretarial affidavit that included publicly-available information about People. The parties advised me that questioning and the filing additional evidence would be completed prior to July 22, 2024, so that a more complete factual record will be before the Court at the July Application. Because the record before me on this urgent preliminary application was not complete, this decision and all the findings that I make in this decision are "without prejudice" with respect to the July Application: they are not to be taken as determining any of factual or legal issues to be decided at the July Application. The July Application will be a *de novo* hearing and the presiding justice will not be fettered in any way by this decision or my reasons: ***Bar C Ranch and Cattle Company Ltd. v Red Rock Sawmills Ltd.,*** 2004 ABCA 113 at para. 19.

Issues

[5] The only issue for determination is whether I should grant an interim interim injunction, pending the hearing of the July Application.

Evidence

[6] The Plaintiff has filed six affidavits:

(a) the Affidavit of Scott Silverberg ("**Silverberg**"), affirmed on April 11, 2024;

(b) the Affidavit of Connie Boychuk ("**Boychuk**"), affirmed on April 11, 2024;

(c) the Affidavit of Dwight Anthony ("**Anthony**"), affirmed on April 11, 2024;

(d) the Affidavit of Blair McComb, affirmed on April 12, 2024;

(e) the Affidavit of Robin Wood ("**Wood**"), affirmed on April 12, 2024; and

(f) the Affidavit of Paul Amundson, affirmed on April 12, 2024.

2024 ABKB 375 (CanLII)

Relevant Facts

[7] People carries on business throughout Canada and its growth model is to acquire smaller profitable firms who have strong reputations and client relationships, run by principals early in their career who will remain engaged in growing People's business after the acquisition. People says that this growth model means it is very important for People to retain an acquired firm's principals and key employees, because they could unfairly compete with People if they left. That is one of the reasons that People requires the principals of acquired firms like Quinn to enter into restrictive covenants.

[8] Concurrently with the Acquisition, Quinn and People entered into an Executive Employment Agreement (the "**EEA**") and a Restrictive Covenants Agreement (the "**RCA**"). Quinn became the President of People's LQBC division. At the time of the Acquisition, the other individual Defendants were employed by LQBC, holding the following positions:

(a) Tyler Patterson ("**Patterson**") was a sales consultant and account manager;

(b) Selena Metez ("**Metez**") was a senior account manager; and

(c) Margaret Archer ("**Archer**") was a senior account manager.

[9] Commencing in February 2024, Patterson, Metez and Archer all resigned their employment with People and commenced working with QAG. Two other employees in People's LQBC division also resigned, and People believes they too are now working for QAG. There is no evidence about how many employees work for People in Calgary, in Alberta, or in its LQBC division. People's website states that it has 2,400 employees across Canada, working in 21 offices, with six of those offices located in Calgary.

[10] In February 2024, People began receiving notices of Agent of Record Change ("**AORs**"). AORs are issued by insurance providers when a client changes its insurance broker, also known for this purpose as an Agent of Record. People and QAG are both Agents of Record, and each of these AORs notified People that their client was leaving them and moving their policies to a different Agent of Record. Between February 19, 2024 and March 25, 2024, People received 63 AORs respecting clients who had been serviced by the Defendants or the other two individuals whom People believes have joined QAG. The AORs do not indicate the identity of the new Agent of Record. However, People has received confirmation that many of these clients have moved to QAG, and it suspects that all 63 have done so. In oral argument on May 10, 2024, People's counsel advised that the number of departing clients had risen to 77.

Analysis

The Applicable Legal Test

[11] People argues that the test to be applied in this interim interim injunction application is the same as for interim injunctions, namely the well-known tripartite test from ***RJR-MacDonald v Canada (Attorney General),*** [1994] 1 SCR 311:

(a) is there a serious issue to be tried;

(b) has the plaintiff demonstrated that it would suffer a substantial risk of irreparable harm in the period leading up to the July Application, if the injunction were not granted; and

2024 ABKB 375 (CanLII)

(c) does the balance of convenience favour the granting of the order?

[12] I must evaluate the facts and apply the tripartite test, having regard to the short time frame involved before the hearing of the July Application: ***Bar C Ranch*** at para 9. The July Application will be heard in approximately one month, so the time period during which an interim interim injunction would be in place is extremely short in this case.

What Standard Applies to the First Step in this Case?

[13] The Defendants agree with the Plaintiff's formulation of the second and third steps in the tripartite test, but say that at the first step, People must satisfy the more rigorous standard of establishing a "strong *prima facie* case". I must first decide which legal test applies to the first step.

[14] It is well-established that an applicant for an injunction must establish a "strong *prima facie* case" rather than "a serious issue to be tried" when the applicant is seeking to enforce a restrictive covenant in restraint of trade, such as in an employment agreement: ***City Wide Towing and Recovery Service Ltd v Poole,*** 2020 ABCA 305 at para 26. However, as noted by the Supreme Court of Canada in ***Payette v Guay,*** 2013 SCC 45 at paras 39 and 45:

> … the common law rules for restrictive covenants relating to employment do not apply with the same rigour or intensity where the obligations are assumed in the context of a commercial contract. This is especially true where the evidence shows that the parties negotiated on equal terms and were advised by competent professionals, and that the contract does not create an imbalance between them.
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> ...
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> To determine whether a restrictive covenant is linked to a contract for the sale of assets or to a contract of employment, it is … important to clearly identify the reason why the covenant was entered into. The "bargain" negotiated by the parties must be considered in light of the wording of the obligations and the circumstances in which they were agreed upon. The goal of the analysis is to identify the nature of the principal obligations under the master agreement and to determine why and for what purpose the accessory obligations of non-competition and non-solicitation were assumed.

[15] I agree with Justice Hollins' reasoning in ***Karavos v Smith,*** 2021 ABQB 714 at para 15, where she used the framework from ***Payette*** to decide whether the restrictive covenants sought to be enforced primarily relate to the sale of the business, or to the employment relationship.

The First-Step Standard as Against Patterson, Metez and Archer

[16] With respect to Patterson, Metez and Archer, it is clear that any restrictive covenants to which they are parties (which I identify and discuss below) relate solely to their employment relationship with People. They were not shareholders of LQBC, nor is there any evidence that they took part in the negotiations that preceded the Acquisition. Therefore, People must establish a "strong *prima facie* case" against Patterson, Metez and Archer, to satisfy the first step in the tripartite test.

2024 ABKB 375 (CanLII)

The First-Step Standard as Against Quinn

[17] At the time of the Acquisition, Quinn was the CEO, majority shareholder and a director of LQBC. He took part in the negotiations. As noted above, concurrently with the Acquisition, he signed both the EEA and the RCA. Both agreements contained restrictive covenants in broadly similar terms, prohibiting Quinn from:

(a) using, disclosing or divulging People's confidential information;

(b) soliciting away from LQBC/People any client, prospective client, associate broker, employee or supplier;

(c) providing services to, catering to or accepting business from any client, prospective client or associate broker; and

(d) directly or indirectly competing with LQBC/People.

[18] The restrictions in the RCA were time-limited and the parties agree they expired in May, 2023. People does not rely on the RCA in this application.

[19] Under the EEA, Quinn was required to give six months' notice to terminate his employment. He did so on June 29, 2023, and his last day of employment with People was on December 31, 2023. The non-competition clause in the EEA was only effective while Quinn was an employee of People, so it expired on December 31, 2023. People had the ability to extend it by up to a further 18 months, by giving Quinn notice and then making additional payments to him, but it did not do so.

[20] The confidentiality covenant in the EEA has no end date. The non-solicitation and non-acceptance covenants in the EEA expire 24 months after Quinn's last day of employment, so they remain in force until December 31, 2025.

[21] Having considered all the evidence, I find that the standard that People must meet on the first step of the tripartite test as against Quinn is that of a "serious issue to be tried". The RCA and EEA were executed on the same day as the Share Purchase Agreement by which the Acquisition was formalized, and the recitals in the RCA make clear that the continued employment of Quinn was an important part of the Acquisition and an important part of the value of LQBC, from People's perspective. The primary purpose of the Acquisition was to sell LQBC's business to People and the restrictive covenants in the EEA were linked to, and in service of, that primary purpose. The evidence discloses that the EEA was negotiated on equal terms and there was no imbalance of power between People and Quinn, both of whom were represented by legal and financial advisors.

Step One in the Tripartite Test: Serious Issue to be Tried / Strong *Prima Facie* Case

Is There a Strong *Prima Facie* Case Against Metez, Patterson and Archer?

The Contractual Claims

[22] Metez, Patterson and Archer entered into employment agreements with LQBC, years before People acquired it. Those employment agreements contain no restrictive covenants or confidentiality provisions.

[23] Patterson also entered into a Corporate Confidentiality Agreement with LQBC, in which he agreed that, during and after his employment, he would hold in confidence, and not use,

2024 ABKB 375 (CanLII)

disclose or give to others, any of LQBC's confidential information. There is no other restrictive covenant in that Corporate Confidentiality Agreement. People says that Metez and Archer also entered into the same type of agreement, but that it cannot locate copies of these agreements. If such agreements were signed, there is no evidence about what terms those agreements may contain.

[24] People also put in evidence a LQBC document entitled "Corporate Policies and Procedures" (the "**Policy**") and some electronic documents that appear to record when the individual Defendants completed various employee training sessions. The LQBC Policy states that all employees agree to keep confidential and not to use or disclose any of LQBC's confidential information, during or after their employment. It does not contain any restrictive covenants. There is a place at the end of the LQBC Policy for employees and management to sign an acknowledgement. No signed acknowledgements were put in evidence. Therefore, there is insufficient evidence for me to find that the terms of the LQBC Policy were part of an agreement between the individual Defendants and LQBC or People.

[25] On the evidence before me, I find that the only contractual covenant binding any of Metez, Patterson and Archer is Patterson's confidentiality covenant in his Corporate Confidentiality Agreement.

The Common Law and Equitable Claims

[26] In addition to alleging breaches of their contracts, People alleges that Metz, Patterson and Archer:

(a) breached a common law duty not to use or disclose People's confidential information;

(b) breached a common law duty not to solicit People's clients;

(c) breached their fiduciary duty, including the duty not to solicit clients (alleged as against Patterson and Metez only);

(d) made fraudulent misrepresentations to People's clients, thereby intentionally interfering with People's economic relations (alleged as against Patterson only);

(e) breached their duty of good faith contractual performance;

(f) breached their implied duty of good faith and fidelity to People as their former employer;

(g) "knowingly assisted" each other in breaching their duties to People;

(h) converted People's confidential information; and

(i) unjustly enriched themselves by unfairly competing against People.

The Evidence Regarding Patterson's Alleged Wrongs

[27] Patterson was an insurance broker with LQBC at the time of the Acquisition and appears to have held the same position when his employment with People ended on February 21, 2024. A summary of People's evidence as against him is that:

(a) in October 2023, Patterson had emailed himself lists of People's clients and prospective clients, which Silverberg believes he can access on his personal phone;

2024 ABKB 375 (CanLII)

(b) after Patterson resigned from People on February 7, 2024, he told Boychuk that he could not tell her where he was going to work, and asked her not to contact the People clients he serviced because he wanted to give them the news personally;

(c) on February 8, 2024, Patterson was accessing confidential information on People's server, including current and prospective client lists. As a result, People blocked his access to the server;

(d) between February 22 and March 21, 2024 People was notified that at least 25 People clients who had been serviced by Patterson had submitted AORs;

(e) one client who submitted an AOR told People that it had been "directed" to do so, but it did identify by whom;

(f) Wood had conversations with three clients who told him that Patterson advised them that the AOR's were necessary because of a "company name change"; and

(g) Boychuk had conversations with two clients who told her that Patterson advised them that they needed to sign new agreements because of a merger or corporate transaction.

[28] Based on this evidence:

(a) Anthony and Silverberg stated that they believe that Patterson solicited People clients to move their accounts to QAG, and that he used People's confidential information to do so, both while he was still employed by People and afterwards. The basis for this belief is that "it would be necessary for Patterson to use [People's] confidential and proprietary information to effect a change of AOR for all these companies in such a short period of time"; and

(b) Boychuk, Wood and Silverberg stated that they believe that after Patterson resigned from People, he contacted People clients that he serviced and misrepresented the facts to them, to cause them to move their business to QAG.

The Evidence Regarding Metez's and Archer's Alleged Wrongs

[29] Metez was a senior account manager and licensed broker with LQBC at the time of the Acquisition and appears to have held the same position when her employment with People ended on February 19, 2024. A summary of People's evidence as against Metez is that between February 27 and March 21, 2024 People was notified that at least five People clients who had been serviced by Metez had submitted AORs. Based on this evidence, Anthony and Silverberg stated that they believe that after her employment with People ended, Metez used People's confidential information to solicit People clients to move their accounts to QAG. Their basis for this belief is that "it would be necessary for Metez to use [People's] confidential and proprietary information to effect a change of AOR for all these companies in such a short period of time".

[30] Archer was a senior account manager with LQBC at the time of the Acquisition and appears to have held the same position when her employment with People ended on February 23, 2024. A summary of People's evidence as against Archer is that:

(a) on February 23, 2024, in the course of saying goodbye to Boychuk on her last day with People, she advised Boychuk not to worry about the large number of clients

2024 ABKB 375 (CanLII)

that Quinn and Russell Lane served because they were transferring those clients to QAG;

(b) on the same day, Archer sent an email to employees remaining at People, to which she attached a four-page excel spreadsheet which contained the following information about client files that she had worked on while at People: the names of approximately 48 clients, the name of the People consultant who serviced those clients, and some notes about the file. Much of this spreadsheet was redacted. The notes that were unredacted can be described as relatively generic, and seemed to provide "current status" information about servicing the file that would have been of utility to the remaining People employees. There were seven client email addresses in the spreadsheet. On the same day, Archer also emailed the same spreadsheet from her People email address to her personal email address. Archer then deleted this email from her "sent" email folder in her People email account and People subsequently recovered it from her "deleted" email folder;

(c) in the last 8 days of her employment with People, Archer forwarded three email chains with People clients to her personal email address; and

(d) Archer appears to have had access to her People email address after her employment ended, and to have received emails from at least one People client at that address, to which she replied from her new QAG email address.

[31] Based on this evidence:

(a) Anthony stated that he believes that Archer deliberately took People's confidential information and either used it or provided it to Quinn, Patterson and/or Metez for them to use to solicit People's clients, and that she was trying to hide this activity from People by deleting the sent email; and

(b) Anthony stated that he believes that Archer, without People's knowledge or consent, arranged for emails sent from her People address to be forwarded to her personal or QAG email address.

Analysis of the Alleged Strong *Prima Facie* Case Against Metez, Archer and Patterson

[32] Metez and Archer are subject to no restrictive covenants and People has failed to establish the terms of any confidentiality agreements to which they are bound. However, they are subject to a common law duty not to use or disclose confidential information of People, their former employer. This duty was summarized by Hunt McDonald J in ***Alberta Computers.com Inc v Thibert,*** 2019 ABQB 964 at para 185:

> Even without an agreement, an employee has an obligation not to use or disclose confidential information gathered in the course of employment: ***Jetco Heavy Duty Lighting v Fonteyne***, 2018 ABQB 345 [***Jetco***] at paras 145-153. This obligation applies to employees whether or not they are fiduciaries: at para 145. At the same time, "following termination of the relationship an employee is free to use for his own benefit or for the benefit of third parties any skill and general knowledge which he acquires during the course of his employment": ***Monarch Messenger Services Ltd v Houlding*** (1984), 56 AR 147 at 152, aff'd (1986) 13 CCEL xxvi, cited in ***Jetco*** at para 145.

2024 ABKB 375 (CanLII)

[33] People has asserted that Patterson, Metez and Archer were all fiduciaries of People. People has submitted only limited evidence about their roles and responsibilities. Archer was an account manager and therefore played an administrative role with respect to clients. Metez performed a dual role at People, as an account manager but also as a sales consultant for "several" clients, whom she had brought in. There is no evidence about how many clients, or which clients this included. Patterson, on the other hand, was a sales consultant, the person who is "the lead individual on the account and is responsible for the overall relationship with the client".

[34] The employee-employer relationship is not one of the traditional categories of fiduciary relationship, but can give rise to an *ad hoc* fiduciary relationship, as explained by Ross J in ***HRC Tool & Die Mfg Ltd v Naderi,*** 2015 ABQB 437 at para 29:

> [29] A fiduciary relationship encompasses significant obligations beyond those that attach to the employee-employer relationship:
>
> > An employee has a basic common law obligation to render faithful and loyal service to his employer during his employment. As a general rule, an employee may leave his employment and lawfully compete against his former employer, taking with him knowledge gained in his former employment, but he may not take or use against his employer any of his employer's trade secrets, confidential information or customer lists, whether during or after his employment. If he was top or senior management or a key employee, he owes a fiduciary duty to his employer, which not only encompasses the ordinary duties of an employee but is an enlarged, more exacting duty which endures after termination": ***Tree Savers*** at para 13.
> >
> > [W]here an employer by the nature of his business is particularly vulnerable to loss by soliciting of his clients' business, a senior employee stands in a fiduciary relationship to his employer and, whether or not he takes with him customer lists and other employer's property, he owes a duty to the employer not, after leaving his employ, to solicit his clients' business. A junior employee who joins with him is subject to the same duties: ***Tree Savers*** at para 16, citing, ***Edgar T Alberts Ltd v Mountjoy*** (1977), 16 OR (2d) 682, 79 DLR (3d) 108 (HC).

Conclusion on the Alleged Strong *Prima Facie* Case Against Metez, Archer and Patterson

[35] I am satisfied on the evidence that Patterson is a fiduciary of People, given that his lead role with clients would make People particularly vulnerable to their loss as a result of his solicitation. Therefore, he is under a duty not to solicit People's clients.

[36] However, the evidence does not establish that Archer and Metez are fiduciaries. There is no evidence that they were "key" or "senior" employees or that People was particularly vulnerable to the loss of clients as a result of their activities. They may be fiduciaries because they are junior employees who have joined Quinn and Patterson at QAG and Metez may be a

2024 ABKB 375 (CanLII)

fiduciary with respect to the clients for whom she acted as sales consultant, but more evidence would be required to make such findings. For the purposes of this application, I do not need to decide whether Archer and Metez are fiduciaries and are therefore subject to a duty not to solicit People's clients, because there is no evidence that either of them has done anything to solicit People's clients to QAG.

[37] The evidence regarding Metez amounts to no more than the fact that, after she resigned from People, five clients that she serviced at People (the evidence does not disclose whether this was as an account manager or a sales consultant) have filed AORs and appear to have moved their business to QAG. There is no evidence about how that occurred, or even whether Metez initiated contact with those clients. People's belief that she used confidential information to solicit these clients is no more than speculation. There is no strong *prima facie* case against Metez on any of the pleaded causes of action.

[38] Similarly, there is no evidence that Archer conducted any solicitation or used any confidential information of People. Based on the redacted document in evidence, I find that the information that she emailed from her People email account to her personal email account contains very little information about People's clients, and is mostly in the nature of providing updates on the files to the remaining People employees. While some of those clients have sent AORs, apparently moving their business to QAG, all such clients were being serviced by either Quinn or Patterson. As I will describe below, there is sufficient evidence to conclude that Patterson has solicited People clients, but the suggestion that Archer has done so, or has used confidential information of People to do so, is speculative only. There is no strong *prima facie* case as against Archer on any of the pleaded causes of action.

[39] Patterson is a fiduciary of People and is subject to both a contractual and common law duty not to use People's confidential information. There is evidence that Patterson attempted to access People's confidential information after he had tendered his resignation but while he was still employed at People. The evidence does not establish if he was successfully able to access that information, or has retained it in some form that he can presently use. Therefore, I am unable to conclude that there is a strong *prima facie* case that Patterson has retained or misused People's confidential information.

[40] However, there is evidence establishing that Patterson has solicited People's clients, and that he has made misrepresentations of fact while doing so. While this evidence is hearsay, coming from People employees who are reporting the contents of discussions allegedly held between Patterson and client representatives, I am entitled to accept hearsay evidence in this interlocutory application. I am satisfied that this evidence establishes that Patterson has solicited People's clients to take their business to QAG, and that he has made factual misrepresentations in the course of doing so. People has established a strong *prima facie* case against Patterson.

Is There a "Serious Issue to be Tried" Against Quinn?

[41] As noted, at the time of the acquisition, Quinn was the CEO, majority shareholder and a director of LQBC. Thereafter and until his employment with People ended on December 31, 2023, he acted as the President of People's LQBC division. As a senior executive, he was a fiduciary of People. He is also subject to restrictive covenants in the EEA that prohibit him from:

(a) using, disclosing or divulging confidential information;

2024 ABKB 375 (CanLII)

(b) soliciting any client, prospective client, associate broker, employee or supplier; and

(c) providing services to, catering to or accepting business from any client, prospective client or associate broker.

[42] I will refer to the precise wording of the relevant provisions of the EEA below.

[43] A summary of People's evidence as against Quinn is that:

(a) as President of People's LQBC division, Quinn was privy to all of the LQBC division's business information, making People particularly vulnerable to unfair competition by Quinn;

(b) despite assuring People numerous times after his resignation on June 29, 2023 that he intended to take a year off from work or to do something entirely different, he incorporated QAG, a direct business competitor doing the exact same type of work as People, only 12 days after his last day at People. Shortly thereafter, he obtained professional liability insurance for QAG and received regulatory approval from the Alberta Insurance Council to act as a Designated Representative and Insurance Agent;

(c) between February 23 and March 26, 2024, People was notified that at least 63 of its clients had submitted AORs, 17 of whom were clients serviced by Quinn. Silverberg described this as an "astronomically higher turnover of clients in a short period" than LQBC had ever experienced previously; and

(d) Quinn sent an email to an insurance provider or broker, asking them to "please not confirm where the AOR is going to", which Silverberg interprets as a request to not disclose that the People client was moving its business to QAG.

[44] Based on this evidence:

(a) Silverberg stated that he believes that Quinn solicited at least four People employees to join QAG, and at least one associate broker to do business with QAG instead of People; and

(b) Silverberg stated that he believes that Quinn solicited People clients to move their accounts to QAG, and that he used People's confidential information to do so. His basis for this belief is that "it would be necessary to use [People's] confidential and proprietary information to effect a change of AOR for all these companies in such a short period of time". However, he provided no further detail as a basis for this belief.

The Alleged Breaches of the Non-Solicitation, Confidential Information and Non-Competition Covenants

[45] There is no evidence establishing that Quinn solicited any People employees to leave People and join QAG. People speculates that this must have happened, because employees left People and joined QAG. In the absence of any evidence of solicitation, I cannot infer from the fact that employees left People and joined QAG, that this was because Quinn solicited them. It might simply be that when these employees learned that Quinn was starting QAG, they voluntarily resigned from People and joined QAG, with no prompting from him whatsoever.

2024 ABKB 375 (CanLII)

[46] The same is true with respect to Quinn's covenants to not use People's confidential information, and to not solicit People's clients, prospective clients, or suppliers. There is no evidence that Quinn did anything to breach any of these obligations. People essentially asks me to infer that he committed breaches, from the fact that a number of clients and one or more brokers moved their business from People to QAG. I am unable to make that inference from the evidence before me.

[47] As noted previously, the non-competition covenant in the EEA has expired and accordingly, People does not rely on it.

The Alleged Breaches of the Non-Acceptance Covenant

[48] However, there is evidence that Quinn, by establishing QAG and having it commence a business that is obviously in direct competition to People, has provided services to, catered to or accepted business from clients, prospective clients or associate brokers of People, and also that Quinn is directly or indirectly competing with People. These types of activities are *prima facie* prohibited by the non-acceptance covenant in 5.05 of the EEA, and therefore they could potentially support a finding that there is a "serious issue to be tried" against Quinn.

[49] To determine whether there is a serious issue to be tried as against Quinn, I must first decide whether the non-acceptance covenant in the EEA is reasonable and not so ambiguous as to be unenforceable. Because I have concluded that there is no evidence on which I could find that there is a serious issue to be tried as to whether Quinn breached his confidentiality and non-solicitation covenants, I need not consider whether those covenants are reasonable and enforceable.

Reasonableness and Enforceability of the Non-Acceptance Covenant

[50] A restrictive covenant will not be enforceable if it is unreasonable. Ross J of this Court enunciated the questions that must be asked to determine whether a restrictive covenant is reasonable, in ***961945 Alberta Ltd (Servicemaster of Edmonton Disaster Restoration) v Meyer***, 2018 ABQB 564 at paras 35 – 55:

(a) do the restrictions protect a proprietary interest that is entitled to protection;

(b) are the restrictions reasonable in their geographic or temporal scope, or are they overly broad;

(c) is the breadth of the restrictions reasonable; and

(d) are the restrictions in keeping with the public interest?

[51] Given my findings that Quinn and People negotiated the EEA on equal terms and that there was no imbalance of power between them, I am required to consider these factors in the context of the EEA as a commercial agreement. Because the restrictions in the EEA relate primarily to the sale of LQBC rather than purely to Quinn's employment, "much more flexibility and latitude is required in interpreting restrictive covenants in order to protect freedom of trade and promote the stability of commercial agreements": ***Payette*** at para 3.

[52] In ***Payette***, the Supreme Court provided the following guidance about taking this commercial approach to the analysis of restrictive covenants:

(a) the non-association covenant is lawful unless it can be established on a balance of probabilities that its scope is unreasonable (at para 58);

2024 ABKB 375 (CanLII)

(b) the defendant has the burden of proving that the terms of the non-association covenant are unreasonable (at para 57);

(c) in a commercial context, a non-competition covenant will be found to be reasonable and lawful provided that it is limited, as to its term and to the territory and activities to which it applies, to whatever is necessary for the protection of the legitimate interests of the party in whose favour it was granted, considering factors such as the sale price, the nature of the business's activities, the parties' experience and expertise and the fact that the parties had access to the services of legal counsel and other professionals (at para 61);

(d) the circumstances of the parties' negotiations, including their level of expertise and experience and the extent of the resources to which they had access at that time (at para 62); and

(e) in principle, the territory to which a non-competition covenant applies is [TRANSLATION] "limited to that in which the business being sold carries on its trade or activities . . . as of the date of the transaction": ... A non-competition clause that applies outside the territory in which the business operates is contrary to public order (at para 65).

[53] With these guiding principles in mind, I will now consider the reasonableness of the non-acceptance covenant in Quinn's EEA contained in section 5.05. That section reads as follows:

> 5.05 **Non-Acceptance** The Employee covenants and agrees with the Employer that the Employee shall not during the Restricted Period, except for the purposes of fulfilling the Duties, directly or indirectly through any other Person, without the prior written consent of the Designate, provide services to, cater to, accept business from or accept as a client, any Client, Prospective Client or Associate Broker, in respect of business of any nature or kind that is the same type of or similar to, the People Corporation Business or any part thereof.
>
> The restrictions in this Section 5.05 shall not apply to any Client or Prospective Client after the Effective Date of Termination, if the Employee can demonstrate that the Employee had not personally communicated with the Client or Prospective Client in respect of the People Corporation Business within the five-year period immediately preceding the Effective Date of Termination and had not received Confidential Information about the Person from any member of the People Corporation Group within that five-year period.

[54] In the Appendix to these Reasons, I have set out the other provisions in the EEA that I have referenced in my interpretation of this covenant, including the definitions of the defined terms in section 5.05.

Legitimate Property Interest Protected by the Non-Acceptance Covenant

[55] I am satisfied that People has a legitimate proprietary interest in protecting its relationships with the clients and associate brokers with whom it does business. It earns its revenue from commissions paid to it by insurance carriers. It places insurance from those carriers with its clients, with whom it cultivates relationships and to whom it provides advice.

2024 ABKB 375 (CanLII)

This is a relationship-based business and People has a legitimate proprietary interest in its clients and associate brokers.

Temporal Restrictions

[56] The covenant is restricted in time from the date the EEA was signed, until 24 months after Quinn's employment relationship with People ended: in this case, December 31, 2025. The covenant therefore purports to be effective from May 23, 2018 until December 31, 2025, a period of approximately 7 years and 7 months, which the Defendants argue is unreasonably long. I disagree. The restriction is designed to last for two years after Quinn's employment ends, and that is not an unreasonable duration, given the nature of People's business and the commercial nature of the EEA.

Geographic Restrictions

[57] There are no geographic restrictions in the non-acceptance covenant. Quinn is restricted from accepting business from any People client or prospective client, regardless of where they are located. At the time of the Acquisition, LQBC was an Alberta corporation that serviced clients primarily in Alberta and British Columbia. People states that it acquired LQBC to enhance its presence in the Alberta group benefit insurance market, because of Quinn's and LQBC's presence and reputation there. On its face, the lack of a geographical limit in the non-acceptance covenant goes beyond the scope of the business LQBC carried on at the time of the Acquisition, and beyond what was necessary for the protection of the legitimate interests of People.

[58] People argues that non-solicitation and non-acceptance covenants do not require geographical limitations to be enforceable, citing ***Payette***. The Supreme Court in ***Payette*** at para 69 did say that non-solicitation clauses need not have territorial limitations to be enforceable, but that non-competition covenants do. The Court did not mention non-acceptance covenants in this context. In that case, the non-solicitation provision required Payette not to solicit customers and also "not to do business or attempt to do business" with any of the Plaintiff's customers. While the Court did not say so explicitly, its reasoning indicates that it implicitly found that this latter restriction was a non-solicitation covenant, and not a non-competition covenant.

[59] In this case, I find that the non-acceptance covenant in the EEA is in substance a non-competition restriction. It prohibits the provision of "services to ... any Client, Prospective Client or Associate Broker, in respect of business of any nature or kind that is the same type of or similar to, the People Corporation Business". That this clause prohibits competition is clear from the fact that it prevents Quinn from providing competitive services to former clients of People, regardless of whether Quinn solicits those clients, or whether they approach him entirely of their own volition.

[60] Because the non-acceptance covenant in the EEA is in substance a non-competition covenant, its geographic limitation must be reasonable to be enforceable. I find that it is not. The lack of any geographical limitation in the non-acceptance covenant means that the prohibition goes beyond the territory in which LQBC operated at the time of the Acquisition, exceeds what is necessary for the protection of People's legitimate interests and is contrary to public order. The non-acceptance covenant is unreasonable and therefore unenforceable.

2024 ABKB 375 (CanLII)

Can the Lack of Geographic Restriction be Cured by Severance?

[61] Although not raised by either party in their written arguments, I have also considered whether a portion of the non-acceptance covenant could be severed, to render it enforceable. Our Court of Appeal considered this remedy in the case of a non-competition covenant entered into as part of the sale of a business, in ***City Wide v Poole*** at paras 39 - 51. Having considered the principles discussed in that case, I find that severance is not available here.

[62] The first type of severance, "notional" severance, allows the Court to read down an illegal provision, to render it enforceable. However, that type of severance can only be used where there is a "bright-line" test for illegality (*e.g.* reading down an interest provision to bring it below the criminal interest rate prescribed in the *Criminal Code*): ***KRB Insurance Brokers (Western) Inc v Shafron,*** 2009 SCC 6 at para 30 - 31. While ***KRB*** involved a restrictive covenant in the employment context, the principle it set out regarding notional severance applies equally in this case.

[63] The second type of severance, "blue-pencil" severance, can be used in cases of restraint of trade agreements entered into as part of a business sale (***City Wide v Poole*** at para 51), but it is unavailable here because there are simply no words that can be removed from the non-acceptance covenant, to cure the lack of geographic limitation. This is not a case where there is a prohibition covering a defined area like "British Columbia, Alberta, Saskatchewan and Manitoba" which the Court could cure by severing "Saskatchewan and Manitoba". There are simply no words that can be removed via blue-line severance. The Court would have to rewrite the EEA to add new words imposing a geographical limitation, which is impermissible.

Breadth of the Restriction

[64] Quinn argues that the non-acceptance covenant is also unreasonable and unenforceable because it is too broad. He says that the classes of persons from whom he cannot accept business, namely "Clients" and "Prospective Clients", are overly broad and ambiguous. Inserting portions of the definitions of "Client" and "Prospective Client" into the text of the first paragraph of the non-acceptance covenant demonstrates the breadth of the restriction:

> ... [**Quinn**] shall not ... provide services to, cater to, accept business from or accept as a client, [**all Persons for whom a member of the People Corporation Group has established and maintains an account or file [and] … also include[s] all Persons to whom any member of the People Corporation Group has sold products or provided services … within the [preceding] thirty six months …**], [**all of those Persons who have been approached by or on behalf of any member of the People Corporation Group to become a Client within the [prior] 18-month period … but who are not Clients … and all of those Persons whom such member has determined should be approached to become a Client and in respect of whom a plan of action has been developed to make such approach, which determination and plan of action are evidenced by the member's internal documentation to such effect, within the [prior] 18-month period … but who are not Clients …**] or Associate Broker, in respect of business of any nature or kind that is the same type of or similar to, the People Corporation Business or any part thereof...

2024 ABKB 375 (CanLII)

[65] People argues that this prohibition is not overly broad, because the proviso in the second paragraph of the non-acceptance covenant narrows the group of persons from whom Quinn can accept business, as follows:

> The [non-acceptance] restrictions … shall not apply to any Client or Prospective Client after the Effective Date of Termination, if the Employee can demonstrate that the Employee had not personally communicated with the Client or Prospective Client in respect of the People Corporation Business within the five-year period immediately preceding the Effective Date of Termination and had not received Confidential Information about the Person from any member of the People Corporation Group within that five-year period.

[66] I do not agree with People's argument. The term "Confidential Information" is defined in the EEA to include "information about any Client or Prospective Client, including **without limitation their identities, contact persons and information relating to their businesses**" [emphasis added]. When that very broad definition operates together with the broad definition of "Prospective Client", the proviso does not narrow the restriction to a reasonably knowable group of people. For example, Quinn would be in breach of the restriction if:

(a) he accepted business from a person (for illustrative purposes in this example, "A", a private company based in Montreal) who was not and had never been a People client, with whom Quinn had never personally communicated and whose business he did not solicit;

(b) a People employee working in another People office ("B"), whom Quinn had never met or communicated with and who had never communicated with A, determined that A should be approached to be a client of People and with respect to whom he (B) had made a plan of action to approach (all unknown to Quinn); and

(c) another People employee ("C"), who had no knowledge of A, or of B's plans to approach A, had made a statement to Quinn about "D", whom C knows personally, but who is also an officer of A.

[67] C, by mentioning D's name to Quinn, would thereby have informed Quinn about a contact person of A, and under the EEA, Quinn would have received Confidential Information about a Prospective Client. By accepting business from A, Quinn would be in breach of the non-acceptance covenant.

[68] The breadth of the non-acceptance covenant is unreasonable and it is unenforceable for that reason.

Public Interest

[69] There is nothing in the evidence to suggest that the group insurance benefits market in Alberta or Canada requires special protection from the courts, or that enforcing the non-acceptance covenant against Quinn would be contrary to the public interest. Therefore, there is no public interest requiring the non-acceptance covenant to be found to be unenforceable.

2024 ABKB 375 (CanLII)

Conclusion on the Reasonableness and Enforceability of the Non-Acceptance Covenant

[70] The scope of the non-acceptance covenant is unreasonably broad, and it is therefore unenforceable. It goes beyond what is necessary for the protection of People's legitimate interests, even considering that the EEA being entered into as a commercial agreement in connection with the Acquisition.

The Alleged Common Law and Equitable Claims Against Quinn

[71] In addition to alleging breaches of the covenants in the EEA, People alleges that Quinn:

(a) breached a common law duty not to use or disclose People's confidential information;

(b) breached a common law duty not to solicit People's clients;

(c) breached his fiduciary duty;

(d) induced and wrongfully induced the Defendant Employees to breach their employment agreements with People by inducing them to resign and work for QAG and by inducing them to solicit People's clients;

(e) breached his duty of good faith contractual performance;

(f) "knowingly assisted" the Defendant Employees in breaching their duties to People;

(g) converted People's confidential information; and

(h) unjustly enriched themselves by unfairly competing against People.

[72] People has not tendered evidence that is sufficient to prove that there is a serious issue to be tried against Quinn with respect to these allegations. People's belief that employee resignations and client migrations from People to QAG have been caused by Quinn's actions is not supported by the evidential record and is speculation.

[73] The only evidence of Quinn taking any active steps after his resignation from which I could possibly infer wrongful conduct is his sending of one email to an insurance provider or broker, asking them to "please not confirm where the AOR is going to". I cannot infer from that email that Quinn breached his duties to People. There are many plausible reasons why Quinn might not have wanted People to know that its client was moving to QAG: avoiding litigation (regardless of his view of the merits of that litigation); avoiding friction; or preserving relationships. This statement is not an admission of wrongdoing.

Conclusion on Whether There is a "Serious Issue to be Tried" Against Quinn

[74] For the reasons set out above, People has not established on the evidence before me that there is a serious issue to be tried against Quinn.

Step Two in the Tripartite Test: Irreparable Harm

[75] Having found that People has established a strong *prima facie* case against Patterson, I must now decide whether People has demonstrated that it would suffer a substantial risk of irreparable harm in the period leading up to the July Application, if an injunction were not

2024 ABKB 375 (CanLII)

granted against him. The Supreme Court of Canada described this element of the test as follows in ***RJR-MacDonald*** at 341 (citations omitted):

> "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...

Are People's Alleged Losses Unquantifiable?

[76] In this case, People has been able to quantify its damages flowing from the loss of the clients who have left and whom it suspects have moved their business to QAG. It has quite precisely calculated the revenue it has lost as a result of these clients leaving: approximately $1 million - $1.2 million per year. This precise quantification is not surprising, given the nature of People's business. People's revenue is generated from the commissions that its clients pay it, and after a client submits an AOR, it starts paying commissions to its new Agent of Record and stops paying commissions to People.

[77] Thus, it cannot be said that People's losses are unquantifiable. They are therefore not "irreparable" for the first reason enunciated in ***RJR-MacDonald***. However, People's harm could still qualify as "irreparable" if that harm cannot be cured. There are a number of bases on which People argues that its harm is not curable. I will address each of those arguments.

The Collectability of People's Alleged Losses

[78] Is the harm curable because People could not collect its damages from the Defendants if People succeeded after trial? People did not present any evidence about the financial condition of the Defendants and therefore it has not established that it would be unable to collect a damages award.

"Clear Breach of a Clear Covenant"

[79] Is the impugned conduct a "clear breach of a clear covenant", such that the irreparable harm standard should be relaxed? Such an approach was endorsed by this Court in ***Renfrew Insurance Ltd v Cortese,*** 2014 ABQB 157 at paras 31 – 35. The only claims that People has established to the necessary standard at this early stage of the proceedings are its claims against Patterson. The only "clear covenant" entered into by Patterson was the covenant in his employment agreement not to use LQBC's (now People's, after the amalgamation of the two corporations) confidential information. The acts of Patterson that I have found to form the basis of a strong *prima facie* case against him are not related to his use of confidential information. Therefore, this is not an appropriate case in which to relax the irreparable harm test, on the basis enunciated in ***Renfrew Insurance***.

Irreparable Harm Due to the Loss of Clients or Loss of Reputation

[80] People argues that its losses are incurable because they involve the loss of clients. People cites two cases from this Court as authority for this proposition: ***Enviro Trace Ltd v Sheichuk,*** 2014 ABQB 381 and ***Easyhome Ltd. v. Casey,*** 2009 ABQB 735.

2024 ABKB 375 (CanLII)

[81] ***Enviro Trace*** is distinguishable from this case, for two reasons. First, the nature of the confidential information alleged to have been misused in that case was substantially different than here. There, the Plaintiff alleged that the Defendants had taken and were using its trade secret, a proprietary method for testing petroleum product tanks. The Plaintiff invested significant resources in ensuring that this proprietary method complied with stringent government regulations. The Court found that the potential harm of the breach was great: once the Plaintiff's secret technique had been disclosed, its secrecy benefit would be lost forever. Also, there was a risk that customers might perceive that the Defendants' firm tested tanks in the same manner as the Plaintiff, and therefore any failure of the Defendants' test certifications might also harm the Plaintiff's reputation, as well as harming public safety. The second distinguishing factor in that case is that, unlike here, there was no evidence that the Plaintiff could quantify its losses.

[82] ***Easyhome*** also had very unique facts that make it distinguishable from this case. The Plaintiff operated in the retail rent-to-own market, in which customer lists were essential to the Plaintiff's business, because repeat business made up 50% of revenue, and approximately 20 – 25% of new customers were the result of referrals from existing customers. Thus, it was difficult or impossible for the Plaintiff to quantify what losses it might suffer from the Defendant's misuse of the Plaintiff's proprietary customer list: it would have no way of determining what repeat business or new customer referrals it had lost.

[83] Thus, in both those cases, the evidence proved that there was a very unique customer dynamic, resulting in extraordinary types of loss that were irreparable. The evidence in this case establishes that People's business is dependent on clients, and that the personal relationship with clients is very important. However, the evidence does not establish that the loss of clients, even at the "astronomical" and unprecedented rate claimed by People, will result in anything other than a quantifiable money loss to People.

Irreparable Harm Due to the Loss of Market Share

[84] A plaintiff's loss of market share can constitute irreparable harm: ***AllWest Insurance Services Ltd v Phendler,* 2009 BCSC 2**; ***Rawlco Radio Ltd v Lozinski et al,* 2012 SKQB 460**. Those cases both involved situations where the Plaintiffs' claimed damages could not be quantified, or where they operated in a niche market, or a market with a very small number of competitors. As noted above, People can quantify its damages in this case. There is no evidence about the size of the market in which People operates, what its share is of that market, or what proportion of its clients have moved or may move to QAG as a result of the alleged wrongs. While not in evidence, People's counsel advised me during oral argument that the number of LQBC clients was approximately 400. It was not made clear whether this was the number of LQBC clients at the time of the Acquisition or presently, and whether that included or excluded the 77 that People says have left.

[85] On the evidence before me, People's loss of market share cannot constitute irreparable harm.

Irreparable Harm Due to the Loss of Employees and Other Types of Loss

[86] People has tendered evidence suggesting that it has suffered other losses as a result of the client migrations: loss of employee morale, loss of presence and reputation in the market and loss of the ability to continue to pursue its growth strategy of acquiring smaller firms. However, the

2024 ABKB 375 (CanLII)

evidence respecting these types of losses is speculative, and in the absence of evidence about unique factors in People's business or market, this evidence does not establish that People's losses constitute irreparable harm.

Conclusion on Irreparable Harm

[87] The evidence does not establish that People would suffer a substantial risk of irreparable harm in the period leading up to the July Application, if an interim interim injunction were not granted against Patterson.

Step Three in the Tripartite Test: Balance of Convenience

[88] At this stage of the test, the Court is required to determine which of the two parties will suffer the greater harm from the granting or refusal of the requested interim interim injunction, pending the July Application. At this stage, I can consider the relative strength of the parties' cases.

[89] I have found that, on the limited evidential record before me, People has established only that there is a serious issue to be tried against one of the Defendants. The July Application will be heard in approximately one month, with what I presume will be a far more extensive evidential record. In these circumstances, I find that the balance of convenience favors the Defendants.

Conclusion

[90] For the reasons set out above, People's application for an interim interim injunction is dismissed.

[91] If the parties cannot agree on the issue of costs, they may address that issue in writing to me in the next 45 days.

Heard on the 10th day of May, 2024.
Dated at the City of Calgary, Alberta this 21st day of June, 2024.

C.D. Simard
J.C.K.B.A.

Appearances:

David Marshall, Erin Baker and Evan Best
for the Plaintiff/Applicant

Sean Smyth, KC and Shana Wolch
for the Defendants/Respondents

2024 ABKB 375 (CanLII)

APPENDIX

1.01 **Defined Terms** The terms used in this Agreement and in any Schedule and not otherwise defined shall have the following meanings:

…

"**Clients**" or, individually, "**Client**" on any particular date means all Persons for whom a member of the People Corporation Group has established and maintains an account or file in the active records of any member of the People Corporation Group. These terms also include all Persons to whom any member of the People Corporation Group has sold products or provided services in the course of or in furtherance of the People Corporation Business or any part thereof within the thirty six months immediately preceding the particular date;

…

(h) **"Confidential Information"** includes all information relating to the People Corporation Business however stored, recorded, copied or remembered, whether in existence on the date hereof or arising subsequent hereto, and whether developed by the Employee or any other Person. Without limiting the generality of the foregoing, Confidential Information includes:

(i) information about any current or prospective employee, Associate Broker or contractor of the People Corporation Group;

(ii) information about the People Corporation Business and acquisition strategies, negotiations and related materials, including term sheets and draft and executed documents in respect thereof;

(iii) information about any Client or Prospective Client, including without limitation their identities, contact persons and information relating to their businesses;

(iv) financial information about any member of the People Corporation Group;

(v) business plans of any member of the People Corporation Group;

(vi) business processes, pricing information, marketing material and advertising material related to the People Corporation Group or the People Corporation Business;

(vii) equipment configurations, system access codes and passwords;

(viii) computer programs existing or under development and all information related thereto including algorithms, specifications, flow charts, listings, source codes and object codes owned by any member of the People Corporation Group or to which any member of the People Corporation Group has access; and

(ix) studies and research of or relating to any member of the People Corporation Group.

2024 ABKB 375 (CanLII)

Notwithstanding the foregoing, the term "Confidential Information" does not include information that the Employee can demonstrate with evidence that would be acceptable to a court of competent jurisdiction is publicly available through no fault or action of the Employee. For greater certainty, any combination of information which includes both Confidential Information and information that is publicly available shall be considered "Confidential Information.";

…

(k) "**Duties**" means such duties relating to the People Corporation Business as may be assigned to the Employee by the Designate, from time to time, and include: (i) promoting the interests and goodwill of the Employer; (ii) promoting the interests and goodwill of the People Corporation Business; and (iii) such tasks and duties in respect of the People Corporation Business as are set out in Schedule C, if applicable, and as may be changed by the Designate or assigned by the Designate to the Employee, from time to time;

…

(m) **"Effective Date"** means the date on which the Share Purchase Agreement was made;

(n) **"Effective Date of Termination"** means the date on which the employer-employee relationship between the Employer and Employee ceases for any reason whatsoever, whether voluntarily or involuntarily, and whether with or without cause and being, for greater certainty, the last day that the Employee reports for work or is otherwise required to perform the Duties;

…

(z) **"People Corporation Business"** means the business currently, and from time to time, carried on by [LQBC] and the other members of the People Corporation Group (excluding the business carried on by People First HR Services Ltd. other than its human resource consulting services), including the business more particularly described in Schedule A;

(aa) **"People Corporation Group"** means People Corporation and its "associates" and "affiliates" and "subsidiary bodies corporate" (as each such term is defined in the OBCA), including the Lane Quinn Group and **"member of the People Corporation Group"** means any one or more of them;

(bb) **"Person"** includes an individual, a corporation, a partnership, an association, a trust, an unincorporated organization, a governmental body, a firm, a joint venture, a syndicate or any other entity of any kind whatsoever;

(cc) **"Prospective Clients"**, or individually, **"Prospective Client"**, on any particular date, means all of those Persons who have been approached by or on behalf of any member of the People Corporation Group to become a Client within the 18-month period prior to that date but who are not Clients on that particular date and all of those Persons whom such member

2024 ABKB 375 (CanLII)

has determined should be approached to become a Client and in respect of whom a plan of action has been developed to make such approach, which determination and plan of action are evidenced by the member's internal documentation to such effect, within the 18-month period prior to that date but who are not Clients on that particular date;

(dd) "**Restricted Period**" means the period commencing on the date of this Agreement and expiring on the last day of the twenty fourth full calendar month following the Effective Date of Termination;

…

(ii) "**Term**" means the period commencing on the Effective Date and ending on the Effective Date of Termination;

…

5.08 **Rights and Remedies Upon Breach** If the Employee breaches, or threatens to commit a breach of any of the Restrictive Covenants, the Employer shall be entitled at its option to any one or more of the following rights and remedies, each of which shall be in addition to, and not in lieu of, any other rights and remedies available to the Employer at law or in equity:

(a) **Specific Performance -** The right and remedy to have the Restrictive Covenants specifically enforced or to have any actual threatened breach thereof enjoined by any court of competent jurisdiction, all without the need to post a bond or any other security or to prove any amount of actual damage or that liquidated damages would not provide an adequate remedy, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the Employer and/or other member(s) of the People Corporation group and that monetary damages will not be an adequate remedy.

…

5.09 **Reasonable Scope, Term and Area** The Employee recognizes, acknowledges and agrees that the Restrictive Covenants, in terms of scope, term and geographic area are reasonable, appropriate and necessary for the protection of the goodwill of the Employer and the other member of the People Corporation Group and the Employee acknowledges that such restriction would not impose any undue burden on the Employee and that the Employee has received good and valuable consideration for such Covenants and that the Employee has received independent legal advice as to the effect of these restrictions.

2024 ABKB 375 (CanLII)