KING'S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 196**

Date: **2024 11 07**
File No.: KBG-SA-00336-2023
Judicial Centre: Saskatoon

BETWEEN:

ADAM NAHACHEWSKY

PLAINTIFF

- and -

RMD ENGINEERING INC., RMD INNOVATIONS INC., and JIM BOIRE

DEFENDANTS

Counsel:

Jared M. McRorie and Nathan Sgrazzutti, Student-at-Law	for the plaintiff
Michelle MacDonald	for the defendants

FIAT — ELSON J.
November 7, 2024

Introduction

[1] In this action, the plaintiff seeks a money judgment and general damages for claims against the defendants, all arising from his shareholding in two corporations. Aspects of his claim are not dissimilar from a corporate oppression proceeding.

[2] The action is presently at the disclosure stage, with exchanged affidavits of documents and soon to be scheduled questioning. Unhappy with the defendants' disclosure in their affidavit of documents, the plaintiff applies for an order for better disclosure and production, including specifically identified documents. These

documents relate to the two corporate defendants and a third corporation.

[3] For the reasons set out below, I am satisfied that, except for the documents relating to the third corporation, the order requested should issue.

The Pleadings

[4] As the outcome of this application fundamentally turns on the factual allegations in the pleadings, I think it best to review the material facts pleaded by both sides. The pleadings consist of the plaintiff's amended statement of claim, the defendants' statement of defence and the plaintiff's reply to the defence.

[5] The pleaded material facts in the amended statement of claim can be summarized in as follows:

1) The plaintiff worked for the defendant, RMD Engineering Inc. [RMD Engineering], as a machinist, starting in 2008. In 2013, he continued with the company, serving as manager of a location RMD Engineering had acquired from another business.

2) In 2015, the plaintiff received an offer to acquire shares in RMD Engineering. The amended statement of claim does not describe an actual purchase or issue of shares to the plaintiff.

3) In 2016, the plaintiff became a one-third shareholder of the defendant, RMD Innovations Inc. [Innovations]. More particularly, he incorporated Innovations along with the defendant, Jim Boire, and an unnamed third party.

4) Innovations operated for five years until the shareholders agreed to dissolve it in 2021. Following this decision, Innovation's cash assets

were split evenly among the three shareholders, leaving only the machinery to be divided.

5) The plaintiff understood from Mr. Boire that RMD Engineering would purchase Innovation's machinery, then valued at $85,506.15, and that the plaintiff would receive one-third of that amount ($28,502.05) as his share of the proceeds.

6) Contrary to this understanding, Mr. Boire, as the sole remaining shareholder of Innovations, retained the equipment. The plaintiff did not receive the $28,502.05.

7) In the meantime, on July 15, 2021, the plaintiff elected to resign as a manager of RMD Engineering and to sell his shares in that company.

8) In the further meantime, Mr. Boire, acting as agent for RMD Engineering and Innovations, advised the plaintiff of an "accounting error" which required the plaintiff to repay $10,000 to cover an overpayment of his shareholder loan between the plaintiff and Innovations. The plaintiff disputes any such overpayment, asserting that the alleged deficiency in the shareholder loan account is attributable to a $30,000 write-off of Innovation's receivables.

[6] Based on these material facts, the plaintiff asserts three specific claims, in addition to his claims for general damages and pre-judgment interest. These three claims seek judgment for the following:

1) the fair market value of his shares in RMD Engineering, in an amount no less than $69,010.48;

2) his one-third share from the disposition of Innovation's machinery,

in the amount of $28,502.05; and

3) payment of $10,000 to reimburse the plaintiff for the repayment he made in response to Mr. Boire's misrepresentation.

[7] Similarly, the alleged material facts in the defendants' statement of defence can be summarized as follows:

1) The plaintiff worked for RMD Engineering from 2008 until 2021.

2) On or about May 27, 2015, the plaintiff and the shareholders of RMD Engineering entered into a shareholders' agreement in which the plaintiff received the right to acquire shares in the company.

3) It was a term of the shareholders' agreement that, upon resignation of a shareholder, RMD Engineering would repurchase the shares of that shareholder within five years of the date of resignation.

4) The plaintiff resigned from his position with RMD Engineering on July 15, 2021, meaning that RMD Engineering has until July 15, 2026, to complete the share purchase.

5) Related to Innovations, Mr. Boire proposed the winding up of Innovations to the shareholders, including the plaintiff, all of whom approved proceeding with the winding up.

6) On February 1, 2020, the plaintiff resigned as a director of Innovations.

7) On or about March 11, 2020, an estimated value of the remaining machinery assets of Innovations was prepared.

8) On November 1, 2020, pursuant to an "approval of transfer of shares agreement", the plaintiff sold and transferred 100 Class A shares in Innovations to a third numbered corporation for value received.

9) In or about May 2021, it was discovered that the actual value of the remaining machinery assets was significantly lower than estimated, with some assets having no value. No transactions were undertaken to sell these assets.

10) The $10,000 overpayment of the plaintiff's shareholder loan account was an honest mistake with no wrongdoing.

[8] The statement of defence goes on to say that, because the plaintiff sold all his interest in Innovations in November 2020, he "had no rights to a distribution of assets or funds derived from the disposition thereof."

[9] I pause at this point to note that the reference in the statement of defence to the plaintiff's resignation and the sale of his shares in Innovations suggests that these events occurred in 2020. This arguably conflicts with the material facts described in the amended statement of claim, which suggests that these events occurred in 2021. It may also conflict internally with other material facts pleaded in the statement of defence.

[10] As earlier mentioned, the plaintiff served and filed a reply to the defence. Among other things, the plaintiff's reply asserts that: (1) the valuation of Innovation's machinery/equipment was not an estimate; and (2) the agreement for the transfer of the plaintiff's shares in Innovations was unconscionable and contrary to the representations given.

Evidence

[11] The only evidence the Court received was the affidavit of Jared McRorie, deposed in support of this application. Mr. McRorie is the counsel of record for the plaintiff. He also appeared in chambers but left the oral argument of this application to a student-at-law in his firm. No affidavit was served and filed on behalf of the defendants.

[12] At this point in the narrative, I am obliged to address the propriety of Mr. McRorie's affidavit. While the affidavit exhibits copies of the defendants' previous affidavit of documents as well as correspondence between counsel, all as uncontroverted matters of record, it also adds editorial commentary. I am satisfied that I must disregard this commentary. I do so based on the ethical rule that lawyers must not give substantive evidence, either by testimony or affidavit, in proceedings in which they also serve as counsel. This rule is specifically set out in Rule 5.2-1 of the Law Society of Saskatchewan *Code of Professional Conduct*, which reads as follows:

> **5.2-1** A lawyer who appears as advocate must not testify or submit his or her own affidavit evidence before the tribunal unless permitted to do so by law, the tribunal, the rules of court or the rules of procedure of the tribunal, or unless the matter is purely formal or uncontroverted.

[13] Aside from Rule 5.2-1, the propriety of lawyers serving as counsel and witnesses in the same proceeding has been the subject of several court decisions in this province over the last four decades. A helpful summary of notable cases on this point is found in *Beauchamp v Beauchamp*, 2023 SKKB 88, where Danyliuk J. wrote the following at paras. 14-16:

> 14 This Court must start with the well-established proposition that lawyers should not be advocates and witnesses in the same matter. This rule does not apply to any particular lawyer; the entire firm is bound by this ethical rule. It cannot be avoided simply by having some other lawyer in the same firm swear the affidavit or take the witness

> stand. While this is trite law in Saskatchewan, reference may readily be had to the foundational cases of *R v Ironchild* (1984), 30 Sask R 269, 1984 CanLII 2666 (CA) and *Re Bazant; Bilson, University of Saskatchewan Faculty Association and Bazant* (1984), 33 Sask R 1, 1984 CanLII 2659 (CA).
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> 15 A more recent expression of this rule is found in *Phillips Legal Professional Corp. v Vo*, 2015 SKQB 248, 473 Sask R 48, where Justice Ball stated at para. 28:
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> > [28] Lawyers who act as counsel in a proceeding must not put their own credibility in issue by asserting as fact anything that is properly subject to challenge. This prohibition extends to testifying before a tribunal, giving evidence in the form of an affidavit, or effectively becoming an unsworn witness by making submissions about factual matters that should properly be proven by evidence. As well, a lawyer may not do indirectly what cannot be done directly by adducing controverted evidence from members of his own law firm. See: Chapter 4.02 of the *Code of Professional Conduct* of the Law Society of Saskatchewan; *Adams v Canadian Tobacco Manufactures' Council*, 2010 SKQB 308, 360 Sask R 236. Credibility concerns are compounded when a lawyer represents himself as a party to the proceeding, as Phillips has done in this dispute.
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> 16 In *Wanner v Christie*, 2016 SKQB 147, Justice Layh disallowed such an affidavit and at para. 66 noted:
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> > [66] A local practice in Saskatchewan has clearly evolved, endorsed by the courts: no distinction will be drawn to permit lawyer "A" in a firm to swear an affidavit to permit lawyer "B" in the same firm to argue a position based on the statements in the affidavit, unless the contents of the affidavit are merely formal or uncontroverted.

[14] Against the backdrop of Rule 5.2-1 and the relevant court decisions, the editorial commentary in Mr. McRorie's affidavit is completely uncalled for. His commentary included: (1) passages purporting to interpret words used in correspondence; (2) descriptions of opposing counsel's remarks at a previous chambers attendance; and (3) passages with opinion-like adverbs and adjectives, such as "simply", "readily" and "extensive". In saying this, I acknowledge that there are also passages in the affidavit that adduce the uncontroverted matters I have already referenced. As such, it would have been appropriate for Mr. McRorie to confine his

evidence to a very impersonal and clinical presentation of the correspondence, all without any commentary. Regrettably, he did not do this.

[15] Rather than disallow Mr. McRorie's affidavit entirely, I will accept it solely as a sworn presentation of the material exchanged between counsel. I will give no regard to any of the other editorial commentary or observations in the body of the affidavit.

[16] According to the matters of record in counsel's affidavit, the plaintiff and the defendants exchanged their affidavits of documents earlier this year. The defence affidavit was deposed by Mr. Boire, who identified himself as the president of RMD Engineering and as "an owner" of Innovations. A few days after receiving the defence affidavit, the plaintiff's counsel questioned its adequacy. In a subsequent letter, he requested delivery of the following documents:

1) all financial information pertaining to both RMD Engineering and Innovations for the period from January 1, 2021 through to December 31, 2023, including, but not limited to:

    a. tax forms;

    b. balance sheets;

    c. income statements;

    d. asset/liability statements; and

    e. all financial assessments and reports completed within this timeframe.

[17] Following this letter, and after multiple email exchanges, Mr. Boire's supplemental affidavit of documents was delivered to the plaintiff's counsel. This

affidavit was also regarded as inadequate. Accordingly, the plaintiff's counsel sent another letter, dated July 2, 2024, in which he asked for production of more documents. This request came in two categories. Under the first category, counsel requested the following:

1) the 2022 tax return of RMD Engineering;
2) the 2022 tax return of Innovations;
3) the 2023 tax return of RMD Engineering;
4) the 2023 tax return of Innovations;
5) all supporting documentation provided to external corporation valuation experts for their work valuing RMD Engineering and Innovations;
6) the 2022 general ledger of RMD Engineering;
7) the 2022 general ledger of Innovations;
8) the 2023 general ledger of RMD Engineering;
9) the 2023 general ledger of Innovations;
10) the complete bank transaction history of RMD Engineering;
11) the 2022 bank transaction history of Innovations;
12) the 2023 bank transaction history of RMD Engineering;
13) the 2023 bank transaction history of Innovations;
14) any and all records showing the equipment of Innovations considered in Mr. Boire's email to the plaintiff related to the dissolution of Innovations, including, but not limited to, the following:
    a. the value of the equipment prior to dissolution of Innovations;

b. the accounting of the equipment on Innovations' general ledger;

c. the value of the equipment upon dissolution of Innovations;

d. any and all correspondence regarding where the equipment was accounted for following the dissolution of Innovations; and

15) any and all documentation, and other forms of evidence that would reflect the issues raised in the pleadings, including but not limited to, the following:

a. the $10,000 the plaintiff was required to pay back at Mr. Boire's direction;

b. the valuation of the plaintiff's shares; and

c. the $28,502.05 owing to the plaintiff.

[18] The second category pertained to documents identified in the letter as reflective of "corporate manoeuvring" by the defendants. In the letter, counsel wrote that he learned about a new company that replaced Innovations when it was dissolved. The new company was simply described as "New RMDI". He then asserted that this information justified his client's request for the following documents:

1) all documentation created regarding the dissolution of Innovations;

2) Articles of Incorporation of New RMDI;

3) the complete minute book of New RMDI;

4) the 2022 and 2023 balance sheets, cash flow statements, statements of accounts, profit/loss statements, and all other financial statements relating to New RMDI; and

5) any and all documentation, whether emails, letters, financial documents, transaction history, or any other form of evidence that would reflect the issues raised in the pleadings.

Applicable Law

[19] The rules governing the "Disclosure of Information" are set out in Part 5 of *The King's Bench Rules*. Fundamentally, the Rules in Part 5 recognize that, in civil actions, the disclosure of relevant information is a duty that faces all parties in an action. The duty applies irrespective of which party bears the burden of proof in the asserted causes of action.

[20] An understanding of this duty is clearly reflected in Rule 5-1, which encapsulates the purposes of pre-trial disclosure. Rule 5-1 reads as follows:

> **5-1**(1) Within the context of rule 1-3, the purpose of this Part is:
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> (a) to obtain evidence that will be relied on in an action;
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> (b) to narrow and define the issues between parties;
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> (c) to encourage early disclosure of facts and documents;
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> (d) to facilitate evaluation of the parties' positions and, if possible, resolution of issues in dispute; and
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> (e) to discourage conduct that unnecessarily or improperly delays proceedings or unnecessarily increases the cost of them.

[21] The means by which the duty to disclose is to be met are set out in Division 2 of Part 5, Rules 5-2 to 5-36, inclusive. Essentially, these means take two forms: (1) disclosure and identification of relevant documents in the possession, custody or control of the parties (Subdivision 2, Rules 5-5 through 5-17); and (2) questioning under oath (Subdivision 3, Rules 5-18 through 5-36).

[22] The means for the disclosure and identification of relevant documents is

through an affidavit of documents. Rule 5-6 governs the form and content of an affidavit of documents. The pivotal requirement of this Rule is Rule 5-6(1)(b), which stipulates that the affidavit must "disclose all documents relevant to any matter in issue in the action". Enforcement of this requirement is found in Rule 5-12. Where there is a dispute about the adequacy of an affidavit of documents, the Court can, in justifiable circumstances, direct orders requiring a party to produce documents and/or to provide further or better production of documents. Rules 5-6(1)(b) and 5-12 are directly engaged in this application.

[23] The phrase "relevant to any matter in issue in the action" has been the subject of several authorities from both this Court and the Saskatchewan Court of Appeal. The case most often cited in this regard is the decision of this Court in *Canadian National Railway v Clarke Transport*, 2013 SKQB 394, 432 Sask R 63 [*Clarke Transport*]. Although the case dealt with the application of Rule 5-18(1)(a), involving the obligation of a witness during questioning, that Rule similarly obliges the witness to be questioned about information "relevant to any matter in issue." Accordingly, Scherman J. addressed the meaning of this phrase in the context of both Rules as well as Rule 5-25, which applies the same phrase in describing the preparation of the duties of a person to be questioned.

[24] Turning to the meaning of the phrase "relevant to any matter in issue", Scherman J. was satisfied that when *The King's Bench Rules* adopted this phrase in 2013, it represented a departure from the broad relevance test that existed under the former Rules. He observed that the new approach was created to strike a proper balance between considerations of efficiency and timeliness in the conduct of litigation. He then went on to observe that the notion of relevance, in Rules 5-6, 5-18 and 5-25, engages notions of both relevance and materiality, albeit melded into one omnibus concept of relevance. In this regard, he wrote the following at paras. 20 to 22:

> [20] A commonly stated approach to the concept of relevance asks the question - *Does the evidence offered, as a matter of logic and human experience, tend to prove or disprove a fact in issue?* It needs to be noted that this iteration of relevance melds the distinct concepts of relevance and materiality into one omnibus concept of relevance that defines relevance by specific reference to a matter in issue.
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> [21] There are two components to this melded concept:
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> i. The component of logical relevance. Does the proffered evidence tend as a matter of logic and human experience to prove or disprove the fact or matter for which it is offered; and
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> ii. The component of whether the fact or matter is in issue in the action. This is the distinct realm of materiality.
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> [22] What determines whether a fact or matter is material are the elements of the cause(s) of action and what the parties have pled as being the facts or their positions. Only if the matter is in issue in the action is the matter material, in a jurisprudential sense. If the matter qualifies as being material to the action, the next question is whether the evidence being proffered tends to prove or disprove the matter in issue. If the question does not relate to a matter in issue as particularized by the pleadings, then the matter is not relevant to any matter in issue.
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> [Italicized emphasis in the original]
> [Underlined emphasis added]

[25] The above passage, or portions of it, have been followed or favourably considered in several Saskatchewan authorities, including *R.J. England Consulting Limited v Palantir Property 2001 Inc.*, 2014 SKQB 65, 439 Sask 255 [*R.J. England*]; *Surespan Construction Ltd. v Saskatchewan*, 2014 SKQB 298, 454 Sask R 205; *University of Regina v HTC Purenergy Inc.*, 2019 SKQB 126, [2020] 2 WWR 512; *Omorogbe v Saskatchewan Power Corporation*, 2022 SKCA 116, [2023] 1 WWR 425; and *Bell v Insulation Applicators Ltd.*, 2023 SKCA 128.

[26] The distinction between relevance and materiality, as part of the omnibus understanding of relevance in Part 5, should not be understated. In *R.J. England*, I adopted the observations in *Clarke Transport*, and then followed up with additional

observations from the relevant jurisprudence in Ontario, one of the first jurisdictions to introduce the "relevant to any matter in issue" requirement to pre-trial disclosure. Among the Ontario authorities I discovered was the decision of Perell J. in *Canadian Imperial Bank of Commerce v Deloitte & Touche*, 2013 ONSC 917, 1 CBR (6th) 66. That case, like the circumstances in *Clarke Transport*, involved a dispute over the scope of examinations for discovery/questioning. In addressing the concept of what he described as "direct relevancy", Perell J. provided helpful definitions for both relevance and materiality. The passage in *R.J. England* where I cited these comments is at paras. 20-21:

> [20] In addressing the scope of examination for discovery under the relatively new rule, Perell J. concluded, in para. 66, that the concept of direct relevancy required consideration of both materiality and relevance. In his view, these were "key determinants" in assessing the propriety of a question on discovery. In defining these determinants for discovery purposes, Perell J. adopted definitions consistent with the general rules of evidence. He defined materiality, in para. 67, as follows:
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> > 67 What facts are in issue, which is to say, what facts are contested or disputed, is explained by the idea of materiality. Evidence that does not address any issue arising from the pleadings or the indictment (a fact in issue) or the credibility of a witness (perception, memory, narration, or sincerity) is immaterial, and it is inadmissible: Sopkina, Lederman, Bryan, *The Law of Evidence in Canada* (2nd ed.), paras. 2.36, 2.50. For example, a person's mental state may be an issue in a given case. If it is an issue, then evidence that would be relevant to proving that the person was inebriated or angry or depressed would be material. If the person's mental state was not an issue in the case, then the evidence about inebriation, anger, or depression would be immaterial because it would not matter to the outcome of the case.
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> [21] As to relevance, Perell J. endorsed the following definition, at paras. 68-69:
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> > 68 To be relevant, evidence must increase or decrease the probability of the truth of the facts in issue: *R. v. Morris*, [1983] 2 S.C.R. 190; *Cloutier v. The Queen*, [1979] 2 S.C.R. 709. Relevance is about the tendency of the evidence to support inferences. In *R. v. Arp,* [1998] 3 S.C.R. 339 at para.

> 38 the Supreme Court of Canada stated: To be logically relevant, an item of evidence does not have to firmly establish, on any standard, the truth or falsity of a fact in issue. The evidence must simply tend to "increase or diminish the probability of the existence of the fact in issue." As a consequence, there is no minimum probative value required for evidence to be relevant.
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> 69 In *R. v. Pilon*, [2009] O.J. No. 1172 (C.A.) at para. 33, Justice Doherty stated:
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> > Evidence is relevant if, as a matter of common sense and human experience, it makes the existence of a fact in issue more or less likely? Relevance is assessed by reference to the material issues in a particular case and in the context of the entirety of the evidence and the positions of the parties.
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> See also R. *v. Watson*, [1996] O.J. No. 2695 (C.A.).
>
> [Emphasis added]

[27] Another perspective on the distinction between relevance and materiality appears in David Watt, *Watt's Manual of Criminal Evidence 2024*, (Toronto: Thomson Reuters, 2024). Although principally referenced in the context of a criminal trial or preliminary inquiry, I do not see the definitions as obviously inapplicable to civil proceedings. At paragraph 1:12, Justice Watt defines relevance as follows:

> Relevance is *not* a legal concept. It is a matter of everyday experience and common sense. It is *not* an inherent characteristic of any item of evidence. It exists as a relation between an item of evidence and a proposition of fact that its proponent seeks to establish by its introduction. …
>
> An item of evidence is properly characterized and rejected as *irrelevant* if it is *not* probative of the fact a party seeks to establish by its introduction by reason of its natural, common sense connection with that fact. An item of evidence is *relevant* where it is probative of the fact a party seeks to establish by its introduction through the same process of reasoning.
>
> Any two facts to which the term "relevant" is applied, are so related to each other that, according to the common course of events, one, either taken by itself or together with or in the context of other facts, proves or renders probable the past, present, or future existence or

> non-existence of the other.

The definition of materiality follows at paragraph 1:13:

> Materiality is a *legal* concept. It defines the status of the propositions that a party seeks to establish by evidence to the case at large. What matters is whether the fact the party seeks to prove bears any relation to the issues in the case.
>
> What is in issue in a case, thus what is material, is determined by the applicable substantive law; the issues raised by the allegation(s) contained in the indictment; and the governing procedural law.
>
> Evidence is *immaterial* if the proposition of fact in that it is offered to prove is *not*, under the governing substantive and procedural law, an issue before the court. Evidence is *material* if it is offered to prove or disprove a fact in issue.

Analysis

[28] Applying the above-described understanding of "direct relevance" to the circumstances of the present case, it is advisable to begin with an identification of the material issues that are reflected in the pleadings and the substantive law that underlies them.

[29] Simply described, the plaintiff's claim involves allegations that the defendants have improperly interfered with his interests as a shareholder, and former shareholder, of both Innovations and RMD Engineering. Although not expressly pleaded, the plaintiff is essentially asserting that the defendants have acted in a manner that is "oppressive" or "unfairly prejudicial" to his interests. Pursuant to s. 18-4 of *The Business Corporations Act, 2021,* SS 2021, c 6, such an assertion, if proved, may justify the imposition of one or more remedies described in s. 18-4(3), including damages.

[30] As drawn from the pleadings, the material issues between the parties involved the following:

1) the valuation of Innovation's machinery in 2021;

2) the valuation of the plaintiff's shares in RMD Engineering as at the date of his resignation; and

3) the circumstances surrounding the alleged accounting error that resulted in the plaintiff having to repay $10,000 relative to his shareholder loan to Innovations, including whether any deficiency is attributable to the questionable write-off of accounts receivable.

I will now address the extent to which the requested documents are relevant to these material issues.

[31] Turning first to the valuation of Innovations' machinery, it is reasonable to believe that the tax returns, general ledgers and bank transaction histories will have the potential to shed light on the value of Innovations' physical assets, including the machinery. Among other things, these documents should reveal information relating to claims for depreciation of physical assets as well as whether there were any transactions related to this machinery. For example, if there were any transactions for the disposition of the machinery, the general ledgers and bank transaction histories should identify the sale price and whether the transactions were at arm's length.

[32] In this context, I am also satisfied that RMD Engineering's general ledgers and bank transaction histories are both material and relevant. On this point, I note the plaintiff's assertion that the machinery had been transferred to RMD Engineering. To test this proposition, it is not inappropriate for the plaintiff and his counsel to have the opportunity to review these documents and determine whether there are any cross-referenced entries that may increase or diminish the probability of the plaintiff's assertion.

[33] As for the valuation of the plaintiff's shares in RMD Engineering, I am not unmindful of the defendants' pleading that the purchase or redemption of these

shares is not to occur until July 15, 2026. Notably, the statement of defence says nothing about the valuation date relative to the purchase or redemption. Absent any pleading to the contrary, I can only presume that the shares were to be valued as at the date of the plaintiff's resignation. It necessarily follows that, as in the case of the valuation of Innovations' machinery, information revealed in the tax returns, general ledgers and bank transaction histories are likely to shed light on both the valuation of the company and of the plaintiff's interest in it.

[34] Even if the plaintiff's interest in RMD Engineering is to be valued as at the date of redemption or repurchase, I am satisfied that the company will experience no prejudice in disclosing the material in this action. I say this because the valuation on July 15, 2026 will almost certainly require consideration of RMD Engineering's financial history in the five years preceding that date. It is the experience of this Court that, when valuing operating corporations – especially on an income-based approach – a three-to-five-year earnings history, if available, will generally factor in the calculation.

[35] The third material issue, relating to the $10,000 repayment against the plaintiff's shareholder loan is obvious. The simple question here turns on the nature of the alleged accounting error and whether, as the plaintiff asserts, it was attributable to an unjustified write-off of an account receivable. If the latter, the plaintiff and his counsel are entitled to disclosure of documents that will allow them to determine, among other things, the nature of the receivable, the date it was written off and the reasons for the write-off. While the general ledger will not likely include this information, it may well appear in other documents used to complete income statements and balance sheets. Such information will invariably be part of a company's tax returns.

[36] In this analysis, I have not addressed the plaintiff's request for information relating to New RMDI. This is deliberate. In my view, there is simply

insufficient evidence or pleadings to support this request. At most, the Court has only a suspicion, based entirely on speculation, that there has been "corporate manoeuvring" between the defendants and New RMDI. There is no specific evidence that such a corporation exists nor is there any meaningful evidence that any transactions with New RMDI impacts, or has the potential to impact, the plaintiff's interests related to either Innovations or RMD Engineering. In this context, the plaintiff's request is, at least presently, excessive.

[37] In making the above comments about New RMDI, I do not mean to foreclose the plaintiff's right to pursue this issue through questioning. It is entirely appropriate for the plaintiff to question the proper officer for Innovations and RMD Engineering about relevant transactions had with other non-arm's length entities, including other corporations controlled by a principal of the two corporate defendants. Depending on the answers given to these questions, undertakings to produce documents relative to transactions involving those entities may be called for.

[38] I have also not addressed the plaintiff's more generalized request for documents. In my view, the generalized description is too overbroad to be set out in a meaningful court order. This is not to say that counsel cannot pursue these issues with specific and well-prepared inquiries during questioning. Again, this may result in undertakings to produce further documents.

Conclusion

[39] In the result, an order shall issue as follows:

1) The defendants shall serve the plaintiff with a new supplemental affidavit of documents that shall disclose, without objection to produce, the following documents:

a. the 2022 tax return of RMD Engineering;

b. the 2022 tax return of Innovations;

c. the 2023 tax return of RMD Engineering;

d. the 2023 tax return of Innovations;

e. all supporting documentation provided to external corporation valuation experts for their work valuing RMD Engineering and Innovations;

f. the 2022 general ledger of RMD Engineering;

g. the 2022 general ledger of Innovations;

h. the 2023 general ledger of RMD Engineering;

i. the 2023 general ledger of Innovations;

j. the complete bank transaction history of RMD Engineering;

k. the 2022 bank transaction history of Innovations;

l. the 2023 bank transaction history of RMD Engineering;

m. the 2023 bank transaction history of Innovations;

2) all records relating to the equipment belonging to Innovations in 2021, including, but not limited to, the following:

a. the value of the equipment prior to dissolution of Innovations;

b. the accounting of the equipment on Innovations' general ledger;

c. the value of the equipment upon dissolution of Innovations;

d. any and all correspondence regarding where the equipment was accounted for following the dissolution of Innovations.

[40] The plaintiff shall have his costs fixed in the amount of $500.00 in any event of the cause, but not payable forthwith. Had it not been for the improperly filed affidavit of counsel, I would have awarded the plaintiff greater costs along with a direction that it be paid within 60 days.

[41] Rule 10-4 is *not* waived.

J.
R.W. ELSON