

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** *Openware Information Systems Consulting Company v. Eyad Mohammad Arab et al*

**BEFORE:** Associate Justice Rappos

**COUNSEL:** *Paola Ramirez*, for the Plaintiff

*Sam Gebrael*, for the Defendants

**HEARD:** November 14, 2025

**REASONS FOR DECISION  
(motion under rule 32.01)**

**Overview**

[1] The Plaintiff, Openware Information Systems Consulting Company, is a Kuwaiti firm that carries on business as an information solutions and services provider. The Defendant, Eyad Mohammad Arab, is a former employee of Openware.

[2] During his employment, Mr. Arab used a 15-inch MacBook Pro laptop that was issued to him by Openware. Mr. Arab has confirmed that there still is Openware information stored on the laptop. Mr. Arab has kept this laptop since the end of his business relationship with Openware. He says the company gave him the laptop as a gift.

[3] In its claim, Openware alleges that Mr. Arab used confidential information to improperly appropriate business opportunities from Openware. It also alleges that he breached fiduciary and other duties owed to Openware through his misuse of confidential information.

[4] Openware brings a motion under rule 32.01 of the *Rules of Civil Procedure* requiring Mr. Arab to make the laptop available for inspection by a third party, Kroll, LLC.

[5] Openware argues that an inspection is necessary so that the trier of fact can determine the central issue in this action, which is whether Mr. Arab misused Openware's proprietary information in breach of his duties to Openware. Openware believes that the laptop is the only known source of objective evidence capable of showing when, how, and to what event that information was accessed. Openware argues that the proposed inspection is narrowly defined, and the order sought is procedural and appropriate.

[6] Mr. Arab argues that Openware's proposed inspection is intrusive, wide-ranging and disproportionate, and that it has failed to show that the laptop includes relevant documents that have not already been produced and/or would not be available through other means such as discovery. Mr. Arab also argues that the proposed inspection would violate his privacy rights.

[7] For the reasons that follow, Openware's motion for inspection of the laptop is granted.

### **Legal Principles**

[8] Subrule 32.01(1) of the *Rules of Civil Procedure* provides that the court may make an order for the inspection of personal property where it appears to be necessary for the proper determination of an issue in a proceeding.

[9] Relief under rule 32 is discretionary.<sup>1</sup> Rule 32 should be construed liberally to permit inspection.<sup>2</sup>

[10] In determining whether to order an inspection, the court will consider (a) whether the proposed inspection appears to be necessary for the proper determination of an issue in a proceeding; (b) whether the party in possession of the property will be prejudiced by the inspection, such as through the impairment of the integrity of the property to be inspected; and (c) the balance of the prejudice (if any) against the benefit to be derived from the inspection.<sup>3</sup>

[11] Necessary has been held to mean useful or probative of an issue. To establish necessity, the moving party must show that there is a reasonable probability that the inspection will reveal something useful for the trier of fact that will assist her in determining an issue in the proceeding.<sup>4</sup>

[12] Even if necessity is established by the moving party, the court is not bound to authorize the test.<sup>5</sup>

[13] Inspections that are wide-ranging and highly intrusive are outside the norm for inspections under rule 32.<sup>6</sup>

[14] An inspection may be refused if there is evidence of some countervailing prejudice that would be occasioned by the order or if the request constitutes an abuse of the inspection rights available under the rule.<sup>7</sup>

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<sup>1</sup> *Ontario District School Board 19 v. 553518 Ontario Ltd.*, 2000 CarswellOnt 3443 (SCJ), para. 11.

<sup>2</sup> *Morier v. Michelin North America (Canada) Inc.*, 2010 CarswellOnt 615 (SCJ), para. 24.

<sup>3</sup> *Ma et al. v 1835942 Ontario Inc. et al.*, 2024 ONSC 725, para. 9.

<sup>4</sup> *Ontario District School Board 19 v. 553518 Ontario Ltd.*, 2000 CarswellOnt 3443 (SCJ), para. 16.

<sup>5</sup> *Donko v. Sleepy Hollow Country Club Ltd.*, 2021 ONSC 192, para. 13, citing *Peel District School Board 19 v. 553518 Ontario Ltd.* (2000), 49 C.P.C. (4<sup>th</sup>) 384 (SCJ).

<sup>6</sup> *Marshall & Swift/Boeckh LLC v SCM Insurance Services Inc.*, 2017 ONSC 788, para. 26.

<sup>7</sup> *Morier v. Michelin North America (Canada) Inc.*, 2010 CarswellOnt 615 (SCJ), para. 21.

### **Analysis**

[15] The first matter to be determined is whether an inspection of the laptop is necessary for the proper determination of an issue. Based on my review of the pleadings and motion records, I have concluded that the inspection is necessary.

[16] Openware has clearly put in issue in its action whether Mr. Arab has misused its confidential information. As set out in its statement of claim issued October 22, 2022, Openware seeks, amongst other things, a declaration that Mr. Arab: (a) misused Openware's confidential or proprietary information, technology or property; (b) breached his duty to keep all confidential information belonging to Openware in strict confidence; and (c) unlawfully interfered with Openware's economic interests and business relationships.

[17] As well, Openware also seeks injunctive relief to prevent Mr. Arab from directly or indirectly using or disclosing Openware's confidential information for any purpose, and requiring him to return all such information and documentation in his possession, power or control and disclose the identities or any persons or companies to whom such information or documentation has been disclosed.

[18] Openware alleges that Mr. Arab owed it a duty to refrain from: (a) misusing or disclosing its confidential information, including not to put Openware's confidential information to his own personal use or advantage, including after termination of employment; (b) soliciting Openware's employees, customers and opportunities; and (c) exploiting business opportunities that he became aware of as a result of his employment with Openware.<sup>8</sup>

[19] Openware also alleges that after his resignation, Mr. Arab solicited at least one of Openware's employees (para. 31), started two companies that compete with Openware (para. 34), and diverted business away from Openware to these companies (para. 35). Openware also says that Mr. Arab has, on multiple occasions, threatened to disclose Openware's confidential and proprietary information (paras. 39-42).

[20] Openware also believes that Mr. Arab wrongly used Openware's confidential and proprietary information to file objections to Openware's bid for a contract with Kuwait Oil Company, which resulted in Openware losing the contract.

[21] It is not disputed by Mr. Arab that the laptop contains Openware documentation and information. During his examination for discovery held on August 8, 2024, Mr. Arab confirmed that he kept the laptop after his employment came to an end, he still has the laptop, that the laptop has Openware documents on it, and that he accesses the documents for the purposes of discovery

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<sup>8</sup> Statement of Claim, para. 27.

(Qs. 657 and 664-666). The laptop remains connected to cloud-based storage containing Openware documents.

[22] Mr. Arab's position is that he was allowed to keep the laptop as a gift from Openware at the end of his employment, and it has served as his personal laptop for many years. He says that he was never asked to delete anything from the laptop as a condition of retaining it. He also argues that an inspection is not necessary, since Openware should be in a position to obtain whatever documents it wishes to review during the inspection process.

[23] I do not accept these submissions. It is not disputed by the parties that Mr. Arab stopped providing services to Openware in some time in 2020. Mr. Arab has admitted that he continues to access and review Openware's confidential information. The only method available to Openware to determine how Mr. Arab has used or accessed such confidential information is for there to be a forensic review of the laptop. By doing such review, it can be determined how often Mr. Arab accessed the information, and whether he copied or transferred the information to other sources. This information will no doubt be useful and probative for the trier of fact to determine whether Mr. Arab did in fact breach any duties to Openware through a misuse of confidential information, which is a heavily contested issue in this proceeding. I do not see how such information can be obtained by Openware through ordinary discovery process.

[24] With respect to the process to be completed for the inspection, Kroll proposes to do forensic imaging, a USB device analysis, a browser history analysis, an email analysis, a recently used application analysis, a deleted file analysis, and keyword searches. Openware's position is that the proposed inspection would be limited to information relevant to the issues in dispute and would have safeguards to address privacy concerns.

[25] Mr. Arab has significant concerns about the imposition of a review on his privacy. He says the laptop contains personal emails, family photographs, and financial records. However, during his cross-examination for this motion, Mr. Arab acknowledged that he has since purchased a new computer and that his personal data stored on the laptop could be transferred to that device.

[26] Additionally, I do not believe that the contested claims to ownership of the laptop is a material issue for the purpose of this motion. Whether or not the laptop was gifted to Mr. Arab by Openware does not alter the fact that the laptop admittedly has Openware confidential information on it, and that Mr. Arab has been accessing such information since he stopped providing services to Openware. If ownership to the laptop remains a contested issues between the parties, it can be dealt with during the course of the action.

[27] In my view, having reviewed the proposed protocol, and given that an independent third party will be performing the review, I am satisfied that the terms of the searches are narrow and focused on Openware matters and will not infringe upon or review any personal matters that Mr. Arab has stored on the laptop.

[28] While there may be some prejudice suffered by Mr. Arab by limiting his access to the laptop for a short period of time while it is being imaged, I believe that such prejudice is less than

the prejudice that would be faced by Openware if it was denied the opportunity to review the laptop to confirm how Mr. Arab has accessed its confidential information since he stopped providing services to them in 2020. As noted above, a review of the laptop is the only way available to Openware to obtain confirmation as to the misuse of the confidential information. To be unable to review the laptop would significantly restrain Openware's ability to establish its case as against Mr. Arab in this action. I do not see this as a fishing expedition, since Mr. Arab has confirmed that the confidential Openware documents have remained on his laptop for years, and that he has accessed it.

**Disposition and Costs**

[29] For the reasons set out above, Openware's motion for an order requiring the laptop to be delivered for inspection is hereby granted.

[30] On the issue of costs, I strongly urge the parties to come to an agreement. If they are unable to do so, they may contact my Assistant Trial Coordinator to obtain my direction on the exchange of written cost submissions.

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Associate Justice Rappos

**DATE:** May 25, 2026