

CITATION: Ballance It Inc. v. Lessard, 2026 ONSC 5148

COURT FILE NO.: CV-26-00001289-0000

DATE: 2026-09-10

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Ballance It Inc., Plaintiff

AND:

Alexandre Lessard, PNH Enterprises Inc, and BoxWorx Inc., Defendants

BEFORE: J.E. Mills J.

COUNSEL: Allyson Fischer, Dave Bushuev and Qasid Iqbal, for the Plaintiff

Wes Jamieson, for the Defendants

HEARD: August 10, 2026, in person

ENDORSEMENT

[1] The plaintiff, Ballance It Inc., seeks an interlocutory injunction to restrain the defendants from using and exploiting its confidential and proprietary information, and from soliciting its clients.

Background

[2] Ballance's business is the rental of modified storage containers designed for event space marketing. The storage containers are deployed for temporary events such as festivals, markets, and urban retail plazas.

[3] Mr. Eric Ballance, the principal of the plaintiff, states that he came up with the conceptual designs for the Ballance container models, and the technical engineering drawings then documented his ideas. He has recently filed copyright registrations to protect his intellectual property respecting the design of the five storage containers that are at issue in this proceeding.

[4] The defendant, Alexandre Lessard, was formerly employed by Ballance as a general manager of the events container business. In this role, Mr. Lessard was the face of the Ballance

events business in the marketplace. He had access to its customer list, rental rates, and pricing estimates, but the ultimate pricing decisions were made by Mr. Ballance. Mr. Lessard admits to acquiring his expertise in the events container business while employed with Ballance.

[5] Mr. Lessard signed an employment agreement that included confidentiality and non-solicitation clauses restricting him from using Ballance's confidential information and from soliciting its clients for a period of twelve months following the end of his employment. The precise language of the confidentiality and non-solicitation terms are as follows:

6.4 The Employee therefore agrees that for a period of twelve months from the date of termination of employment, for any reason or cause, he/she will not, directly or indirectly anywhere in North America:

- approach or solicit any person, firm, or corporation who is or has been a customer of the Employer, or has received a proposal from the Employer, at any time during the twelve months preceding her termination, for the purpose of encouraging such person, firm or corporation to purchase any article like or capable of being used in place of the goods distributed or sold by the Employer;
- supply such articles described above to any person, firm or corporation described above.
- attempt to direct any person, firm or corporation away from the Employer.
- have any contact with the Employer for the purpose of encouraging any such employee to sever his/her employment with the Employer.

6.5 Upon direction by the Employer, the Employee shall keep confidential any other matters concerning the Employer.

[6] On November 5, 2025, Ballance terminated Mr. Lessard's employment and provided him with a severance package. The separation agreement reaffirmed his post-employment

confidentiality and non-solicitation obligations. He was required to return all company property, including its confidential information.

[7] Within three weeks of leaving Ballance, Mr. Lessard was hired by the defendant PNH Enterprises Inc. to lead and develop their new business of event space container rentals, operating as BoxWorx Inc. Mr. Lessard described himself as the “head honcho” of BoxWorx. He carries the title of General Manager and is a part owner of the business. PNH had some prior involvement in the container business but started BoxWorx to actively compete in the industry.

[8] Shortly after Mr. Lessard joined PNH, it engaged the same engineering firm and fabrication company previously used by Ballance, and BoxWorx revealed on its website the seven container designs available in its new rental fleet. Five of the designs bear a striking resemblance to the Ballance containers.

[9] Three Ballance customers have now moved their business to BoxWorx.

[10] Ballance was granted an order on June 4, 2026, (the “Merritt Order”) enforcing the non-solicitation provisions and ordering the return of its confidential information. The defendants were required to deliver all documents, files, electronic records, and materials containing Ballance information wherever stored, to their counsel to hold in confidence and to preserve pending the final determination of the matters in issue or further court order. The Merritt Order was made at a case conference without the benefit of responding materials from the defendants.

[11] Counsel confirmed that Mr. Lessard had complied with the terms of the Merritt Order however, it is now known that while his computer was imaged and the results were delivered to counsel, the computer was then returned intact to Mr. Lessard. The confidential information was not removed from his personal computer. His electronic devices and his iCloud account were never imaged. Mr. Lessard continues to have full access to the Ballance confidential information. He submits that the Merritt Order required him to preserve the information, not delete it. Therefore, he submits that he was entitled to retain the Ballance documents and its customer list.

[12] Ballance now seeks an order directing a forensic examination of all Mr Lessard's personal devices and iCloud account to identify, preserve, and secure the return *and deletion* of all confidential information.

[13] Ballance also seeks an interlocutory injunction to restrain the defendants from using that confidential information and from soliciting its clients for a period of twelve months. It is not seeking to restrict the defendants from competing in the industry but submits they must do so fairly and using containers that are not exact duplicates of the Ballance designs. Although the non-solicitation clause restricts the supply of goods, Ballance is not seeking to enforce that restriction.

Applicable Law for an Injunction

[14] The applicable test to be met for an interlocutory injunction is as expressed in *RJR MacDonald Inc. v. Canada (Attorney General)*¹: Is there a serious question to be tried? Will the moving party suffer irreparable harm if an injunction is not granted? Does the balance of convenience favour the granting of an injunction?

[15] To satisfy the first stage of the *RJR MacDonald* test for a mandatory interlocutory injunction, the applicant must establish they have a strong *prima facie* case.² The serious issue to be tried standard is elevated when the interlocutory injunction seeks to compel a respondent to undertake a positive course of action to restore or maintain the *status quo*. If the overall effect of the injunction is to require a respondent to do something or to refrain from doing something, the moving party must demonstrate they have a strong *prima facie* case, one that is likely to succeed at trial.³

[16] The level of scrutiny as to the validity of a non-competition provision will be more rigorous than that which would ordinarily be applied to a purely commercial agreement.⁴

¹ 1994 CanLII 117 (SCC)

² *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5, at para. 15.

³ *Ibid.*, at paras. 16 & 17.

⁴ *Payette v. Guay inc.*, 2013 SCC 45, at para 58

[17] Restrictive covenants in employment agreements are *prima facie* unenforceable as a restraint on individual liberty. To be valid and enforceable, a non-competition provision in an employment agreement must be reasonable and the party relying on it bears the onus of proving that the provision is reasonable as between the parties. If the restrictive covenant is not clear as to the extent of the activity being restricted, the length of time of its application, or the geographical limits to the restriction, the provision will not be reasonable, and it will not be enforceable. There will be deference provided to restrictive covenants negotiated between “knowledgeable persons of equal bargaining power” and the reasonable expectations of the parties will be a consideration.⁵

[18] If a restrictive covenant is found to be unreasonable, it must be struck. It cannot be judicially revised to be “read down” until it is reasonable. That would result in a restrictive covenant to which the parties did not agree.⁶

Non-Solicitation

[19] The non-solicitation clause in Mr. Lessard’s employment agreement is limited in time to twelve months, and in scope to directly or indirectly selling or supplying similar products to any past, present, or prospective customers of Ballance from the twelve-month period preceding his termination. The geographical restriction is North America.

[20] Although the modified container rental business appears to be a niche market, it is not the exclusive domain of Ballance. There is no restriction on Mr. Lessard working in the industry, and he is free to develop a new client base for BoxWorx from anyone who has not worked with Ballance in the one year prior to his termination. Mr. Lessard is not permitted for one year after his termination to develop a client base using current Ballance customers or contacts.

[21] The unchallenged evidence of Mr. Ballance is that the rental of event marketing space is a business that often requires several months and occasionally more than a year to finalize contracts. With that market reality, the non-solicitation clause as drafted appears to be a reasonable

⁵ *Mandeville Holdings Inc. v. Santucci*, 2021 ONSC 4321, at para. 37.

⁶ *Ibid.*, at para 56; *Shafron v. KRG Insurance Brokers (Western) Inc.*, 2009 SCC 6 (CanLII), at paras. 52-56.

limitation on Mr. Lessard's individual liberty. It permits him to make a living while allowing Ballance a one-year business cycle to secure its existing customer base.

[22] I am satisfied Ballance has a strong *prima facie* case as to the enforceability of the non-solicitation clause of Mr. Lessard's employment agreement. The provision appears to be consistent with the business realities of the industry, and it is limited to North America, the geographic area predominantly within the business domain of Ballance. There is ample evidence to support that the event container business is a worldwide enterprise without any limitations as to its reach. North America is not unduly limiting, particularly as it is restricted only to those clients or potential clients with whom Ballance had business dealings in the twelve months prior to Mr. Lessard's termination in November 2025.

[23] Mr. Lessard is a very experienced individual with many years in the corporate marketing industry. He has supported global companies with their experiential marketing campaigns and in that role, he will have negotiated many contracts. It cannot be said that he was at a disadvantage when he agreed to the non-solicitation and confidentiality provisions of his employment contract with Ballance. The parties appear to have been in a place of relative equal bargaining power when the restrictive covenant was signed.

[24] I do not accept that Mr. Lessard was a fiduciary of Ballance. The evidence of Mr. Ballance confirms that he retained the final decision-making authority in all aspects of the business. While Mr. Lessard's role was to identify business opportunities, to foster professional relationships, and to work with the existing customer base, it was clear that he made no operational decisions that would financially bind the company. Those decisions remained with Mr. Ballance. Mr. Lessard held no ownership interest in the company, nor did he act as an officer or director. He was an employee who managed client relationships. It was an important role in the company, but Ballance was not particularly vulnerable to Mr. Lessard.

[25] To the extent there is any vulnerability, it has arisen following Mr. Lessard's termination. While employed at Ballance, he was not provided with a company owned computer and/or cell phone. All his business was conducted on his personal devices. Mr. Lessard had access to customer

communications and client pricing strategies and was able to retain that information when his relationship with Ballance ended in November 2025.

[26] Mr. Lessard is alleged to have breached his employment agreement by soliciting Ballance clients. Three customers are identified as having been solicited by Mr. Lessard – Ovzon AB, The Astound Group, and SDI.

[27] Ovzon was a very satisfied Ballance customer. It posted a 5-star Google review praising the Ballance customer service. Mr. Bries, the Global Marketing and Communications Director of Ovzon, provided an affidavit that he and Mr. Lessard had become personal friends, and it was only when he reached out to begin planning for a future event that he learned of Mr. Lessard's termination from Ballance. Both he and Mr. Lessard state in their affidavits that Mr. Bries was the one who first reached out, and that he independently made the decision to transition the Ovzon business to BoxWorx. Mr. Bries states that the decision was made without any influence or interference by Mr. Lessard, and that it was driven primarily because of his positive professional and personal interactions with Mr. Lessard, in contrast with his rather poor impression of Mr. Ballance. However, on cross-examination, Mr. Lessard admitted to having contacted Mr. Bries by email one day after he received an employment agreement from PNH. The defendants maintain that this contact cannot be viewed as solicitation as it was prior to any formal employment with PNH. The email sent by Mr. Lessard and any response thereto have not been produced, and an adverse inference may be drawn from that omission. This contradictory evidence calls into question the independent nature of the decision to move the Ovzon business from Ballance to BoxWorx.

[28] SDI was a Ballance client with whom Mr. Lessard was the direct contact. SDI unexpectedly backed out of a project for the 2026 Calgary Stampede, advising that it was going to use a local Alberta company to save on fuel costs. It later came to light that SDI transferred the project to BoxWorx, which is located in Ontario. There is no affidavit from an SDI representative to explain its position on the matter, but the timing and excuse for ending the relationship with Ballance is on its face suspicious. However, there is a direct connection between SDI and PNH. A former employee of SDI who was actively involved in a prior Calgary Stampede event is now an

employee of PNH. It is conceivable that the business moved due to the efforts of that employee, rather than Mr. Lessard.

[29] The Astound Group was a prospective client with whom Mr. Lessard had dealings while at Ballance. They had reached an agreement in principle for a 2026 charitable event. Without explanation, Astound transferred its business respecting this project to BoxWorx, purportedly as a result of independent recruitment efforts by another PNH employee. There is no affidavit from the PNH employee nor from a representative of Astound. It is certainly questionable to suggest that even though Astound was a prior customer of PNH in other business operations, the new agreement with BoxWorx for the same charitable event was negotiated entirely without any involvement of Mr. Lessard, the General Manager of the new corporate entity and a person with extensive experience in the event container business. The email correspondence created after this litigation was commenced is not particularly persuasive to dispel the suggestion that Mr. Lessard was actively involved in persuading Astound to move its business from Ballance to BoxWorx.

[30] The affidavit of Mr. Hudon confirms that an email blast was sent to approximately 600 PNH clients on or about February 10, 2026, to advise of the new event container business. To the extent any of these clients were also customers of Ballance, it cannot be said that the large-scale email communication amounts to solicitation, direct or indirect, of Ballance customers.

[31] I am satisfied the evidence establishes there is a serious question to be tried respecting the solicitation of Ballance clients. However, I am not satisfied that the evidence is sufficient to meet the high standard of a strong *prima facie* case of solicitation as is required to impose a restrictive covenant.

[32] I am unable to determine, based on the conflicting evidence, that Ballance has a high probability or great likelihood of success, or that it would almost certainly succeed on an extensive review of the merits.⁷

⁷ *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5, at para. 17.

[33] I cannot say that Ballance is very likely to succeed at trial in its allegations that Mr. Lessard actively solicited clients after his termination and during his subsequent employment with PNH. There are other plausible explanations for the loss of these clients. There are certainly legitimate questions surrounding the explanations, but the answers are not so obvious as to say with confidence that Ballance has a high probability or great likelihood of success at a trial.

Confidential Information

[34] There are also valid questions respecting the use of Ballance confidential information by PNH and BoxWorx in the creation of their modified event containers, but I am not satisfied the evidence before me rises to a strong *prima facie* case of a breach by Mr. Lessard of his confidentiality obligations to Ballance.

[35] Storage containers are uniform in terms of their initial dimensions, but it appears from the photos in Mr. Lessard's affidavit that the design modifications for event containers are limited only by one's imagination. Undoubtedly there will be some similarities, but the BoxWorx design drawings do appear to be very similar, if not identical, to the Ballance designs.

[36] Although assigning five of its products different names, BoxWorx used many of the same descriptors and marketing terms as those used by Ballance for its container offerings. In the Minibox model, BoxWorx uses "small but mighty" as a descriptor which is exactly the term used by Ballance to describe its 10' Serving Containers. That could easily have been taken from the publicly accessible marketing materials or the Ballance website. It is not definitive evidence of Mr. Lessard having breached his confidentiality obligations.

[37] The affidavits of Mr. Dziedzic suggest that Mr. Lessard relied on the Ballance design information to create modified storage containers for BoxWorx that would directly compete with the offerings of Ballance. Mr. Dziedzic states that shortly after joining PNH, Mr. Lessard approached him with comprehensive drawings of what appeared to be an exact replica of Ballance's Double Stack Container, and offered artificial intelligence generated conceptual drawings of what appeared to be copies of other Ballance container designs.

[38] Mr. Ballance's affidavit documents communications he had with the main supplier of Ballance containers who confirmed that Mr. Lessard approached them in March 2026 to produce containers for BoxWorx using Ballance designs.

[39] While a storage container itself is not unique and the stacking of containers is an obvious benefit, as can be seen at any active railway crossing, the design modifications by Ballance are its proprietary information and may be subject to copyright protection. Registrations have been recently filed but whether Ballance is entitled to copyright protection is an issue for another day. It is entitled to the confidentiality protections agreed to by Mr. Lessard in his employment contract.

[40] The challenge is that many of the identifying features to the various models appear to be standardized doors and windows. The BoxWorx Cantilever Dream does at first instance appear to be a duplication of the Ballance Double Stack container. However, Mr. Ballance concedes that F. Fontana of Giant Containers Inc. created the technical drawings for the Double Stack container and that the drawings were created without any supervision by Mr. Ballance. There is no evidence that Giant Containers Inc. assigned a copyright in the technical drawings to Ballance. Therefore, the structural design may not be property of Ballance. Also, the conceptual drawings of Rick Davis Promotions Inc. from 2020 suggest that a double stack structure was fabricated for a PNH client long before Mr. Lessard joined the company.

[41] The other Ballance designs were apparently developed without technical drawings which were only generated after the commencement of this litigation to secure copyright registrations. Therefore, Mr. Lessard did not have access to the technical information related to the Ballance designs and could not have exploited it for the creation of the BoxWorx designs.

[42] It is concerning that Mr. Lessard apparently retained photos of Ballance containers, however that alone is not sufficient to meet the high test of strong *prima facie* evidence that the defendants exploited confidential information in the design of the BoxWorx container models. It is widely accepted that the Ballance containers were used by multiple clients and placed in the public domain. Anyone, including Mr. Lessard, could have taken photographs of the containers and viewed the visual components of the containers. The placement of windows and doors is

limited by the size of the structure and the purpose for which the container is intended to be used. The interior and exterior designs will be directed by the corporate end user.

[43] There are legitimate questions and concerns surrounding the design of the BoxWorx containers, but the answers are not so obvious as to say that Ballance is almost certainly going to be successful in its claims that the defendants exploited confidential information that was available to Mr. Lessard from his prior employment. There are no technical drawings from Ballance to validate its claims that the BoxWorx containers are duplicate designs generated from the wrongful disclosure and misuse of its confidential information.

Irreparable Harm & Balance of Convenience

[44] Where proprietary confidential information is in the hands of a competitor, significant and ongoing irreparable harm is presumed.⁸ To this day, Mr. Lessard retains all the confidential information he acquired while employed at Ballance on his personal computer, his cellphone, and his iCloud account. The defendants have had access to Ballance's customer lists, pricing models, container designs, and market strategy for more than ten months.

[45] However, it is not a certainty that the confidential information has been exploited. There is undoubtedly a risk and perhaps even a suspicion of misconduct, but that does not amount to a strong *prima facie* case. Any financial loss with respect to the loss of any clients is measurable and is compensable in damages. Any ongoing risk may be mitigated with the requirement that Mr. Lessard comply with a further imaging of all his electronic devices and cloud-based storage accounts, following which all documents related to his employment with Ballance be deleted.

[46] Mr. Lessard was provided the opportunity to comply with the Merritt Order, with respect to both the strict language of the order and its intention. He chose to adopt a reading of the order which undermines its intention.

[47] By requiring Mr. Lessard to image his devices and turn them over to his counsel, it is apparent that the intention of the Merritt Order was to preserve the documents for litigation

⁸ *Hotsplex Inc. v. Edwards*, 2011 ONSC 3837, at para. 23.

purposes. It was not to then allow Mr. Lessard to retain the information and expose it to the risk of being exploited for the benefit of PNH and BoxWorx.

[48] Ballance requests a forensic audit of Mr. Lessard's personal devices and iCloud storage account. I decline to make such a sweeping and intrusive order where there is disputed evidence as to whether the confidential information has in fact been exploited.

[49] It is appropriate however to require Mr. Lessard provide his personal devices and access to his back up storage accounts, including his iCloud account, to Steven L. Rogers of Digital Evidence International Inc. so that any source holding Ballance confidential information may be imaged and preserved for litigation purposes. The imaging results shall be delivered to counsel for the defendants. Before the devices and cloud-based storage account(s) are returned to Mr. Lessard, all Ballance proprietary and/or confidential documents and information shall be identified, returned to Ballance, and deleted from all sources. As the need for this further imaging review was caused by Mr. Lessard's failure to voluntarily comply with the terms and intentions of the Merrit Order, he shall bear the associated costs of the further review.

[50] The balance of convenience favours Mr. Lessard. The non-solicitation provision of his employment agreement is due to expire in two months. Based on the conflicting evidence before me, it is not at all certain that he has breached his contractual obligations to Ballance. Further, to impose an injunction now would effectively extend the restrictive covenant to a length of time that would not have withstood scrutiny vis à vis reasonableness at first instance. The lengthy restraint on Mr. Lessard's liberty cannot be justified.

[51] Mr. Lessard remains bound by the non-solicitation and confidentiality provisions of his employment contract with Ballance for the period of twelve months following his termination. I decline to order the injunctive relief sought by Ballance as it has failed to meet the strong *prima facie* test and the balance of convenience favours Mr. Lessard. To the extent there is harm to be suffered by Ballance, it can be measured and quantified with an order for damages.

[52] Having been mostly successful on this motion, the defendants are presumptively entitled to their reasonable and proportionate costs. I accept that the issues were complex and important to both parties. The factual background information was extensive, and the written materials were

comprehensive. The Cost Outlines filed by both parties are comparable and they reflect that significant effort was exerted by counsel in the preparation of written materials and attendance at the motion.

[53] The relief sought by the plaintiff evolved as the matter proceeded, with the Amended Notice of Motion seeking narrower relief than initially advanced and the factum outlining even more defined relief. This caused the defendants to unnecessarily incur increased costs as they were required to redirect their responding materials and oral submissions. The defendants evidently failed to adhere to the agreed upon timetable, causing the plaintiff to unnecessarily incur increased costs. The failure of Mr. Lessard to comply with the letter and spirit of the Merritt Order also caused the plaintiff to incur significant costs.

[54] I am satisfied that the partial indemnity costs sought by the defendants are reasonable and proportionate, having regard to the importance and complexity of the matters in issue. The time incurred is fair and it appears that where appropriate, matters were assigned to lower billing professionals. I am reducing the amount ordered to account for the time that would not have been incurred but for Mr. Lessard's retention of the Ballance confidential information on his personal devices following the Merritt Order. Therefore, the defendants are entitled to their costs of \$35,000, inclusive of fees, disbursements, and HST. The costs shall be payable within sixty days.

J.E. Mills J.

Date: September 10, 2026