CITATION: Forge Recruitment Inc. v. ISearch Recruitment & Consulting, 2026 ONSC 5959
COURT FILE NO. CV-24-00731812-0000
DATE: 2026-10-21

2026 ONSC 5959 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
FORGE RECRUITMENT INC. Plaintiff	*Brian Diamond*, Lawyers for the Plaintiff
– and –	
ISEARCH RECRUITMENT & CONSULTING and MYLENE KANERT also known as MYLENE PIMENTEL ISONO and MICHAEL KANERT Defendants	*Matthew Jantzi*, Lawyers for the Defendants
	HEARD: APRIL 4, 2025

REASONS FOR DECISION

G. DOW, J.

[1] The plaintiff, a recruiting firm apparently specializing in certain areas such accounting, finance and legal positions sough interim injunctive relief restraining the defendants to September 27, 2025 from interfering with their:

i) economic relationships with its employees, agents or contractors;

ii) inducing the plaintiff's employees from entering into employment relationships with the defendants;

iii) communicating with the plaintiff's employees or contractors; and

iv) soliciting, approaching or offering employment, work, partnership or business venture to the plaintiff's employees, agents or contractors.

[2] The defendants oppose the relief sought on the basis the plaintiff has failed to meet the agreed upon three part test for such injunctions found in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.

BACKGROUND

[3] The defendant, Mylene Kanert was employed by the plaintiff as a recruiter between July 1, 2020 to September 11, 2024 when she resigned, effective September 27, 2024. While no details were provided, there was no dispute this defendant was one of many recruiters employed by the plaintiff. On May 15, 2020, Mylene Kanert signed an employment contract which included confidentiality, non-competition and non-solicitation clauses. A second contract was signed in July, 2020 in return for $100.

[4] The non-competition clause restricted Mylene Kanert for twelve months following the end of her employment recruiting accounting and financing employees anywhere in the City of Toronto and the City of Vancouver. No evidence was referred to as to the extent of either party's business being conducted in other municipalities.

[5] The non-solicitation clause restricted Mylene Kanert from contacting customers or candidates with whom she have had contact with in the previous three years of her employment with the plaintiff.

[6] The conflict of interest clause prohibited Mylene Kanert from engaging in employment that conflicted with that of the plaintiff and to "immediately advise the Company of any such conflict, actual or potential, that arises after you have entered into this Agreement".

[7] This employment contract was signed before the *Working for Workers Act*, S.O. 2021, c. 35 came into force restricting these types of employment terms.

[8] During her employment, Mylene Kanert's performance and income declined. It was her evidence and, not proven otherwise, that this was due to family challenges including a miscarriage, her need to support relatives financially and paying for her son's autism treatment. This reduced her ability to work longer hours.

[9] Further, in cross-examination, she also testified the whole company suffered from decreased volumes of business and revenue in the two years before her departure. This was discussed amongst employees at work (cross-examination transcript of Mylene Kanert, page 11, questions 32-35).

[10] Post resignation, the plaintiff learned Mylene Kanert had registered the defendant ISearch Recruitment & Consulting as a general partnership in October 17, 2023. On July 1, 2024, the business was registered as a recruiting company with the Government of Ontario. Mylene Kanert's

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evidence was, despite these steps, ISearch Recruitment & Consulting was not active. The only funds in its bank account was put there to cover banking fees.

[11] On October 16, 2024, the plaintiff first became aware of the need for concern when contacted by an individual who had used the plaintiff's services to obtain her current position and advised that she had been contacted by Mylene Kanert about positions available through ISearch for trained legal positions. Legal positions were apparently a relatively new area of recruitment for the plaintiff's business. Mylene Kanert admitted obtaining the individual's name from her sister's notebook. Her sister also had worked at the plaintiff company and within Mylene Kanert's team in 2023. She also resigned effective September 27, 2024 (cross-examination of Mylene Kanert, pages 35-38, questions 127-145).

[12] This was compounded by the plaintiff's records noting Mylene Kanert had access the plaintiff's entire data base for legal positions during the two weeks before her resignation was effective. Mylene Kanert's explanation for this was she was assisting her team finding individuals who had expressed interest in changing positions.

[13] The only other evidence of Mylene Kanert having breached the terms of her employment contract was a recorded telephone conversation between Joncarlo Bairos, the President and CEO of the plaintiff and a former employee of the plaintiff advising Mylene Kanert had been in contact with her and raised a possible business relationship. That telephone call was recorded by the plaintiff without the knowledge or consent of this former employee. As a result, I prefer not to rely on its content.

[14] To the contrary, Mylene Kanert produced emails dated October 28, November 13, December 2 and December 4, 2024 responding to contact from candidates that had used the plaintiff's services in the past in which all were advised Mylene Kanert was no longer with the plaintiff but to seek out other experienced professionals at the plaintiff firm. The parties appeared in Civil Practice Court on December 10, 2024 to set this motion hearing date.

ANALYSIS

[15] The first part of the requisite test is whether there is a serious issued to be tried. Plaintiff's counsel correctly noted that in matters seeking to restrain former employees, the test is altered to the higher level of a *prima facie* case (see *Jet Print Inc. v. Cohen*, [1999] O.J. No. 2864 (at paragraph 39). Here, the conduct does appear to be a breach of restrictions Mylene Kanert agreed to.

[16] In this regard, counsel for the defendant relied on the comments in *M & P Drug Mart Inc. v. Norton*, 2022 ONCA 398 (at paragraph 34) that employment agreements, which restrict the individual's activities are "subject to more rigorous scrutiny than a non-competition covenant in a sales agreement". Mylene Kanert acknowledged her awareness of the terms, having the opportunity before signing the agreement to obtain legal advice (and declining to do so). She did

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apparently obtain legal advice in January, 2023 when first contemplating ending her employment with the plaintiff. As a result, she knew, at a minimum, the need to be very careful.

[17] There was direct evidence as to Mylene Kanert having contacted the individual whose identity was obtained through her sister's notebook. There was no direct evidence as to the position or location. However, its existence in her sister's notebook, as a former employee of the plaintiff makes it clear even greater care was required. Where this the only part to the test to address, I would be inclined to grant some form of injunctive relief as sought.

[18] The second part involves addressing whether the plaintiff would suffer irreparable harm if the injunction is not granted. I raised with counsel the absence of any detailed evidence as to the size of each party and there was no dispute the plaintiff is the much larger operation.

[19] I also raised why this situation was not more suited to assessing damages. The plaintiff's Statement of Claim acknowledges this possibility at paragraph 1(i) where the plaintiff seeks an order for the "Defendants to maintain proper records to allow for an accounting and disgorgement of all profits earned by the said defendants from their wrongful conduct". Further, in the plaintiff's Factum (at paragraph 110) it confirms the "intention of FORGE RECRUITMENT to continue in pursuit of the damages within the Claim after the determination of the within motion".

[20] When challenged on this point, plaintiff's counsel did point to the nature of the business involving referral upon referral and the recruitment of candidates as making any such tracing impossible to ascertain or prove. Irreparable harm is that which cannot be quantified in monetary terms (see *RJR-MacDonald Inc. v. Canada (Attorney General)*, *supra* at paragraph 64). Examples given are where, without the injunction imposed, the plaintiff would be put out of business, suffer permanent market loss or damage to its business reputation. The evidence before me was not of that nature and does not rise to that level. As a result, I find the plaintiff has failed to meet this second part of the applicable test.

[21] The third part of the applicable test is whether the balance of convenience weighs in favour of granting the injunction or denying it. That is, which party would suffer the greater harm if the injunction were granted pending a determination on the merits (or, in this instance, until September 27, 2025).

[22] On this point, it appears clear the plaintiff is the much larger, ongoing business and as the defendants have submitted, there is a risk of their "losing their livelihood" (defendants Factum, at paragraph 43). Further, there was no evidence of the plaintiff having lost any business, and more particularly, having lost any business to the defendants.

[23] Given these factors, in conjunction with the totality of the evidence presented, Mylene Kanert's awareness of her potential obligation and demonstrated efforts to abide by it (the emails referring potential candidates back to her former employer) results in my concluding the balance of convenience favours the defendants.

CONCLUSION

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[24] As a result, this motion is dismissed.

COSTS

[25] As a required by Rule 57.01(6), both parties had available their claim for costs in the event they were successful. Neither party had served a Rule 49 Offer to Settle. The plaintiff's Costs Outline set out partial indemnity fees of $11,163 plus HST ($1676.14) and disbursements of $2,069.35 for a total of $14,908.49.

[26] The defendants' Bill of Costs sought partial indemnity fees of $8,601.79, inclusive of HST and made no claim for disbursements.

[27] Neither side had any submissions that the other's claim was excessive. I agree with those positions.

[28] Given the result, I fix costs in the amount of **$8,601.79**, inclusive of partial indemnity fees, HST and disbursements, payable by the plaintiff to the defendants forthwith.

ADDENDUM

[29] As indicated, this matter came before me and was argued on April 4, 2025. Fortunately, the reasons above were drafted in the weeks following that hearing. Unfortunately, (and upon review of my records), it was not released to counsel. It was not discovered until an e-mail from counsel received on October 20, 2026. I profoundly regret this having occurred. May I suggest going forward, as a further redundancy, that counsel follow up (certainly with me) if the decision has not been released to them within the three months judges are provided for such decisions to be completed.

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Mr. Justice G. Dow

Released: October 21, 2026

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