CITATION: Crawford v. Stingray Group Inc., 2026 ONSC 5772
COURT FILE NO.: CV-20-646
DATE: 2026/10/19

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:		
SHAWN CRAWFORD	Plaintiff	Brian Kelly, Counsel for the Plaintiff (Responding Party on the Motion)
– and –		
STINGRAY GROUP INC.	Defendant	Athanasios Makrinos, Counsel for the Defendant (Moving Party on the Motion)
		HEARD: September 24 and 26, 2024; October 4, 2024; June 25, 2026; and written costs submissions

The Honourable Justice Catrina Braid

REASONS ON MOTION

I. OVERVIEW

[1] Shawn Crawford was employed by Stingray Group Inc. for almost 10 months until his employment was terminated on March 6, 2020. Mr. Crawford sued for wrongful dismissal. In these reasons, I shall refer to Mr. Crawford as the plaintiff and Stingray Group Inc. as the defendant.

[2] At an Examination for Discovery and in subsequent answers to undertakings, the plaintiff refused to produce documents that he had received from his new employer, Cineplex Digital Media ("Cineplex"), during a three-month period prior to commencing that employment on June 15, 2020. The defendant brought a refusals motion.

[3] When the parties first appeared before me on the refusals motion, I ordered that the plaintiff produce the unredacted confidentiality clause and/or confidentiality agreement that he relies on to justify his refusal to produce the documents. These were

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produced to the court and then to counsel for the defendant. The parties subsequently appeared before me to argue whether the plaintiff is required to produce the documents that he received from Cineplex during the relevant time period.

[4] The refusals motion raises the following issues:

A. Are the documents relevant to the litigation?
B. If yes, should the plaintiff be required to produce the documents?

[5] For the reasons set out below, I find that the documents are relevant to the issue of mitigation of damages and the income that the plaintiff earned following termination of employment with the defendant. Further, the plaintiff has failed to satisfy me that there is a valid reason to exempt him from the requirement to produce the relevant documents. Therefore, the court orders that the plaintiff shall produce the documents.

II. ANALYSIS

A. Are the Documents Relevant to the Litigation?

[6] The defendant seeks production of all relevant unredacted correspondence between the plaintiff and Cineplex between March 6, 2020, through to June 1, 2020. As part of his documentary production in this case, the plaintiff produced a heavily redacted email dated June 1, 2020, which contained an offer of employment from Cineplex.[1] The names of the documents attached to the email have been partially or fully redacted, and the attachments themselves have not been produced. The plaintiff refused to produce an unredacted copy of the email and its attachments; and also refused to produce any other correspondence between the plaintiff and Cineplex during the relevant time frame.

[7] The scope of discovery is defined by the pleadings and a question is proper if there is a semblance of relevance to the pleadings. Pleadings are to be read liberally for this

[1] The plaintiff redacted the email before providing it to his lawyer and did not provide the attachments. Redacting documents prior to production should be a rare event. When it does occur, it is the obligation of counsel to obtain a clean unredacted version of the document and make determinations themselves as to what portions should be redacted. It is not appropriate for counsel to allow the client to govern this process.

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purpose: *Ontario v. Rothmans Inc.* 2011 ONSC 2504 at para. 129; *Nazir v. St. Johns Ambulance*, [2006] O.J. No. 456 (SCJ) at para. 2.

[8] This is a wrongful dismissal action. The Statement of Defence alleges that the plaintiff did not take adequate steps to mitigate his damages by making sufficient efforts to obtain alternative employment after his dismissal. Further, the Statement of Defence stated that, to the extent that the plaintiff has earned any income, the defendant claims an equivalent set-off from any amounts found owing by it. In his Reply, the plaintiff denied these allegations.

[9] The plaintiff takes the position that the documents that the defendant seeks are not relevant to the litigation I reject this submission, and find that the documents are relevant to two issues in this action:

i. **Mitigation of damages**: Wrongful dismissal actions require the plaintiff to lead evidence regarding their losses and damages as a result of a dismissal. The onus then shifts to the defendant to demonstrate that the plaintiff has failed in their duty to mitigate. The information necessary to show a failure to mitigate is, for the most part, in the hands of the plaintiff: *Red Deer College v. Michaels* [1976] 2 S.C.R. 324.

ii. **Loss of income**: A plaintiff in a wrongful dismissal action must prove loss of income by leading evidence that they were either unemployed or underemployed during the material period following termination of employment. Income received during that period should be deducted from the loss of income calculation.

[10] Therefore, the documents are relevant.

B. Should the Plaintiff be Required to Produce the Documents?

[11] Plaintiff's counsel argues that the defendant should bring a Rule 30.10 motion for production of a non-party's records from Cineplex. I reject this submission. Rule 30.02(1) and (2) require the plaintiff to produce all documents relevant to any matter in issue in an action that is or has been in their possession, control or power, unless a specific privilege

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is claimed. The production of relevant documents is important because it allows the parties to evaluate their positions for settlement and to prepare for trial. In this case, the documents in question are clearly in the plaintiff's possession and a Rule 30.10 motion is not required.

[12] Irrelevance alone is not a sufficient ground on which to redact portions of a document. The party who has redacted the document must establish that redaction is necessary to protect an important interest, such as patent or trade secrets; personal income tax information; or commercially sensitive financial information: *McGee v. London Life Insurance Company,* 2010 ONSC 1408 at para. 13; and *King v. Intact*, 2017 ONSC 1647 at para. 12.

[13] The plaintiff bears the onus of establishing that the redactions and refusals to produce relevant documents are necessary to protect an important interest. At various points in time, the plaintiff has refused to produce the unredacted documents for the following reasons:

i. That the plaintiff redacted the documents out of “a professional courtesy.”

ii. That the documents are not relevant because the action is about the plaintiff’s dismissal from Stingray and not his re-employment with Cineplex.

iii. That the correspondence was subject to privilege, although the plaintiff failed to identify which privilege applied.

iv. That he could not disclose the offer of employment due to the nature of the employment contract, and that it contained an explicit confidentiality clause.

v. That Cineplex counsel advised the plaintiff not to produce an unredacted copy of his contract of employment with Cineplex.

vi. That disclosing the offer of employment to a direct industry competitor poses a threat to Cineplex, because confidential information is contained in these documents; and that disclosing it would cause Cineplex harm or give Stingray a competitive advantage.

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vii. That the defendant's insistence that confidential documents be produced “risks the integrity of competitive business practices”.

viii. That it is not the plaintiff’s documents to produce, since the defendant is a direct industry competitor, and that the documents are not in his power, possession, or control.

[14] Although the plaintiff has claimed privilege, he has never specified which privilege allegedly applies to the documents. Given the nature of the documents, they are not subject to solicitor-client privilege, litigation privilege, or settlement privilege. I reject the submission that the documents are privileged.

[15] The confidentiality agreement relied on by the plaintiff states:

> Company policy deems the details of each employee’s terms of employment, including but not limited to Base Salary, Bonus target, Bonus potential, and Benefits plan as private; and this information must remain strictly confidential. All information about the terms of your employment must be kept confidential and not share with anyone at any time, other than your immediate family and your financial advisors. Failure to comply may result in disciplinary action up to and including termination of your employment.

[16] The confidentiality clause does not identify nor protect any confidential or sensitive business information of Cineplex, such as trade secrets, client lists, financial data, or intellectual property. It addresses the plaintiff’s terms of employment, which he is permitted to disclose to his immediate family and financial advisor.

[17] I note that the plaintiff was not a Cineplex employee when he received the correspondence and the offer of employment. I find, therefore, that there is no contractual agreement preventing the production of the documents.

[18] The plaintiff relies heavily on the case of *Chuang v. Toyota Canada,* 2013 ONSC 3235. However, that decision is entirely distinguishable from the matter before the court. In that case, non-parties sought leave to be granted standing on the motion to argue

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against an order for disclosure. Those parties provided evidence of the confidential and commercially sensitive nature of the documents, and the harm that would be caused by production of the documents sought. The court weighed proportionality and did not order production of the documents.

[19] On the other hand, in this case, the plaintiff advised legal counsel for Cineplex that this motion was before the court. Cineplex did not seek standing on the motion and did not file evidence regarding the nature of the confidential information contained in the documents and the potential harm if the documents were produced.

[20] Instead, the plaintiff provided hearsay evidence based on information and belief, stating that he has be advised by counsel for Cineplex that “some of the documents sought by the defendant are confidential as the defendant is a direct competitor with Cineplex.” However, the plaintiff has not provided the name of the person that he spoke to, or what harm would be caused to Cineplex by the production of the documents. I give that portion of the plaintiff’s affidavit no weight.

[21] Rule 30.1.01 is the deemed undertaking rule which prevents the defendant from using documents produced by the plaintiff for any purpose other than this proceeding. Counsel for the plaintiff argues that the deemed undertaking role may be insufficient because Cineplex may risk serious financial harm should confidential and commercially sensitive information be made available to a competitor who may obtain an unfair commercial advantage. However, I have not been provided with any evidence of harm, nor evidence that the deemed undertaking rule will be insufficient to protect Cineplex’s interests.

[22] The documents are in the hands of the plaintiff and are within his possession and control. He is required to produce them.

III. COSTS

[23] At the court’s direction, the parties filed their Costs Outlines after making oral submissions. I reviewed those Costs Outlines after deciding the motion. I also note that

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a case conference was held before Smith J. on March 7, 2024, and the costs of that case conference are to be determined by me when deciding the costs of the motion.

[24] The defendant seeks costs in the amount of $37,582.45 on a substantial indemnity basis. The defendant's partial indemnity costs were $27,967.66. The plaintiff's costs were $11,565.40 for partial indemnity and $15,420.52 for substantial indemnity.

[25] I find that the defendant was wholly successful on this motion and is entitled to costs. In determining quantum, the court is to consider the factors set out in Rule 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as well as s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. Those factors include the principle of indemnity, the reasonable expectations of the parties, the complexity of the proceeding, the importance of the proceeding, and the conduct of the parties in litigation. I have considered these factors.

[26] I have also considered the principles in *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), at para. 24. The fixing of costs should reflect what the court views as a fair and reasonable amount to be paid, rather than any exact measure of the actual costs to the successful litigant.

[27] I have taken the following into account.

i. Plaintiff's counsel provided changing justifications for refusing to produce the documents, which necessitated two separate motions to address production of: 1) the confidentiality clause that the plaintiff relied on to justify the refusals; and then 2) the substantive documents. The plaintiff's conduct unnecessarily lengthened these proceedings.

ii. On the day that the parties argued the first stage of the motion, plaintiff's counsel consented to producing the confidentiality clause, which should have been conceded in advance of attending at court.

iii. One of the affidavits filed by the defendant was given no weight by the court as it was opinion evidence.

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[28] The parties attended before me on four separate court dates. The defendant filed motion records, affidavits, factums, and a compendium.

[29] The motion was of high importance to the parties. The two most important factors are the principle of indemnity and the amount of costs that the unsuccessful party could reasonably have expected to pay in the event they were unsuccessful.

[30] I find that a fair and reasonable award of costs for the refusals motion, including the motion for disclosure of the confidentiality clause and the case conference, is $25,000, inclusive of HST and disbursements.

IV. CONCLUSION

[31] For all of these reasons, the court makes the following orders:

1. The plaintiff shall produce all relevant unredacted correspondence between him and Cineplex Media between March 6, 2020, through to June 1, 2020;

2. The plaintiff shall produce an unredacted copy the June 1, 2020 email and all of its attachments, which redacted version was initially produced by way of correspondence of plaintiff's counsel, dated February 22, 2021; and

3. The plaintiff shall pay costs of the refusal motion to the defendant in the amount of $25,000, inclusive of HST and disbursements. These costs shall be paid by November 30, 2026.

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Braid, J.

Released: October 19, 2026

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