

**CITATION:** BrokerLink Inc. v. The Commonwell Mutual Insurance Group, 2026 ONSC 20  
**COURT FILE NO.:** CV-25-00756529-0000  
**DATE:** 20260102

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** BROKERLINK INC., Plaintiff

**AND:**

THE COMMONWELL MUTUAL INSURANCE GROUP, Defendant

**BEFORE:** Justice Papageorgiou

**COUNSEL:** *Doug McLeod, Stefani Connelly, and Lidia Hencic*, for the Plaintiff

*John N. Birch, John M. Picone, and Gordon Goodman*, for the Defendants

**HEARD:** December 18, 2025

**ENDORSEMENT**

**Overview**

[1] BrokerLink Inc. (“BrokerLink”) is an insurance broker who sells insurance products for a variety of insurance companies.

[2] The Commonwell Mutual Insurance Group (“Commonwell”) sells insurance. It is a mutual company which means that those parties who purchase insurance from Commonwell are “Members” who are owners.

[3] On January 1, 2014, BrokerLink and Commonwell entered into an agreement whereby BrokerLink would market and sell Commonwell insurance products (the “Agreement”).

[4] On September 3, 2025, BrokerLink provided notice to Commonwell that it was exercising its right to terminate the Agreement effective January 1, 2026, and that it would cease issuing new policies for Commonwell effective September 10, 2025

[5] BrokerLink says that on October 27, 2025, it discovered that Commonwell was engaging in communications with BrokerLink’s customers for the purpose of marketing to and soliciting their business which it says was a breach of the Agreement.

[6] It also alleges that this has resulted in a breach of confidence.

[7] BrokerLink seeks injunctive relief both prohibitory and mandatory.

## Decision

[8] For the reasons that follow, I dismiss the motion.

## Issues

- Issue 1: Has the plaintiff established a substantial issue to be tried in respect of its request for prohibitory relief and a strong *prima facie* case in respect of matters where it seeks a mandatory injunction?
- Issue 2: Has the plaintiff demonstrated irreparable harm?
- Issue 3: Who does the balance of convenience favour?
- Issue 4: Has BrokerLink complied with its obligation to provide an undertaking as to damages?

## Analysis

**Issue 1: Has the plaintiff established a substantial issue to be tried in respect of its request for prohibitory relief and a strong *prima facie* case in respect of matters where it seeks a mandatory injunction?**

### *The Injunction Test*

[9] Pursuant to *RJR MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at p. 334, the usual test for an interlocutory injunction is as follows:

- (a) Is there a serious issue to be tried?
- (b) Will the party requesting the injunction suffer irreparable harm if the injunction is not granted? and
- (c) Does the balance of convenience weigh in favour of granting an injunction or denying it?

[10] In *RJR MacDonald*, the Court indicated that, although rare, there are exceptions where the moving party must establish a more stringent “strong *prima facie* case”: at p. 339.

[11] The parties agree that the strong *prima facie* case applies to the mandatory relief sought.

### *The prohibitory injunction sought*

[12] The prohibitory injunction BrokerLink seeks is to prevent Commonwell from directly or indirectly communicating with any entity or individual to whom BrokerLink provides insurance brokerage services and who had a policy issued pursuant to the Agreement. This includes a prohibition from: (i) advising a customer that BrokerLink will stop selling Commonwell's

insurance products; (ii) advising a customer that BrokerLink will be moving their policy to another insurance provider; (iii) encouraging a customer to consider remaining with Commonwell or transferring their business to another broker; (iv) providing a customer with the name or contact information of a broker other than BrokerLink; (v) accepting or pursuing business from a customer where the opportunity arose following communications made to the customer in the period after Commonwell's receipt of BrokerLink's notice of termination of the Agreement; and (vi) sending marketing, promotional, or sales materials to a customer: (a) directly or indirectly engaging in any other communications with BrokerLink customers other than for purposes expressly permitted by the Agreement; and (b) directly or indirectly using any of BrokerLink's proprietary, confidential, and/or commercially sensitive information, including BrokerLink customer lists, lists of expiring policies, and all other information related to BrokerLink's portfolio of business (the "BrokerLink Proprietary Information"), for any purpose other than as expressly permitted by the Agreement or with BrokerLink's prior written consent in accordance with the terms of the Agreement.

*The mandatory injunction sought*

[13] The mandatory injunction BrokerLink includes various orders including that Commonwell change the content of certain webpages set out in certain communications sent to customers and replace such webpages with a direction that any BrokerLink customers contact BrokerLink, and that Commonwell send letters to other brokers advising them that if they are contacted by a BrokerLink customer who holds a Commonwell policy that they should contact BrokerLink.

*Breach of Contract Claim*

[14] I am satisfied that BrokerLink has established a substantial issue to be tried as to its breach of contract claim.

[15] After BrokerLink terminated the Agreement, Commonwell wrote to 700 policy holders whose policies were expiring as follows:

Dear Commonwell Member,

We want to thank you for being a Policyholder and Member of The Commonwell Mutual Insurance Group and for trusting us to protect you and your family.

Effective January 2026 your broker, BrokerLink, has chosen to stop selling Commonwell insurance products. This means that upon your policy renewal, they will be moving your policy to another insurance provider they are contracted with.

The choice is yours, and we encourage you to consider your options, which include remaining with The Commonwell.

We have excellent service-focused, local brokers available across Commonwell Country where you live who are ready and willing to ensure a seamless continuation of your Commonwell policy. Simply provide them with the policy number and effective date referenced above and they'll take care of the rest. Visit [www.thecommonwell.ca/NewBroker](http://www.thecommonwell.ca/NewBroker) for a list of high-quality, local options. If you

choose to stay with The Commonwell with a new broker, you can rest assured that you will continue to enjoy your loyalty discounts, consistent coverage and the community support that you have come to expect with your Commonwell policy. As a mutual, we invest our profits back into our communities because we don't have shareholders to pay dividends to. Our profits serve a mutual purpose: investing in the communities we serve and investing in strategies and technology to continuously improve our products and service. With The Commonwell Mutual, every Member and every community we serve benefits.

Thanks for choosing Commonwell

[16] There was a QR code and link which led to a Commonwell website presenting the names and contact information of Commonwell-affiliated brokers (the “Notice”).

[17] There was a standstill agreement for a while and after it expired, on November 27, 2025, Commonwell sent a further notice to all customers which was unrelated to the expiry dates of their Commonwell policies which provided as follows:

Dear Commonwell Member,

We want to thank you for being a Policyholder and Member of The Commonwell Mutual Insurance Group and for trusting us to protect you and your family.

Your broker has made the decision not to sell Commonwell insurance products. This means they will be seeking to move your coverage to another insurance provider at the time of renewal. We want to ensure you remain fully informed. Policyholders are entitled to choose the insurer that they want to provide coverage to them. It is important to be aware that, if you elect to renew with another insurer, you will cease to be a Member and Policyholder of Commonwell.

**The choice is yours, and we encourage you to consider your options, which include remaining with The Commonwell. Visit [www.thecommonwell.ca/options](http://www.thecommonwell.ca/options) for a list of local options.**

If you choose to stay with The Commonwell, you can rest assured that you will continue to enjoy your loyalty discounts, consistent coverage and the community support that you have come to expect with your Commonwell policy. As a mutual, we are owned by our Member Policyholders and, as you will have seen through our annual Impact Report, we invest profits from Member premiums back into our communities. Thank you for being a Commonwell Member.

[18] BrokerLink argues that these notices violated the following provision of the Agreement:

9.5 In the event of termination of this AGREEMENT by either party:

(i) The BROKER will within thirty (30) days of receipt of such termination notice inform the COMPANY in writing of his/her undertaking to replace the policies with

an alternate insurer and shall assume full responsibility for advising each insured at least forty-five (45) days prior to the expiry date of their coverage; or

- (ii) Where the BROKER does not within thirty (30) days undertake to replace the policies and so advise the COMPANY in writing, the COMPANY shall notify the policyholders, in writing, at least forty-five (45) days prior to the expiry date of each policy, of its intentions.
- (iii) Where the BROKER does not comply with section 9.5(1), the COMPANY shall be entitled to immediately contact the policyholders regarding the termination of the BROKERAGE AGREEMENT.

[19] It is BrokerLink's position that it makes the introduction of the customer to Commonwell and that customers that it introduces to Commonwell were its customers. As such, the Agreement is designed to preserve the customer as BrokerLink's and also prevents Commonwell from having any communications with the customer after termination where it seeks to retain the customer.

[20] In this case, BrokerLink did provide the notification set out in s. 9.5(i). Thus, it argues that Commonwell is prohibited from communicating with the customer about the termination.

[21] Commonwell argues that s. 9.5 is merely a consumer protection provision because upon termination of the Agreement, someone has to communicate with the policyholder to advise them of the termination. The wording of s. 9.5 speaks of BrokerLink "assuming the responsibility for advising insured" but does not contain any language prohibiting Commonwell from communicating with policyholders. I agree this is significant because it would have been a simple matter for the parties to have provided such a clear restrictive covenant if this is what they objectively intended.

[22] Commonwell points out there is a good reason why there is no such restrictive covenant: any such prohibition would be inconsistent with the regulatory context.

[23] In that regard, there are rules, policies, and guidelines published by the Financial Services Regulatory Authority and the Canadian Council of Insurance Regulators. This regulatory context requires fair treatment of customers by brokers and insurers and requires them to provide accurate and clear information before, during, and after the sale of an insurance policy so that customers can make an informed decision. Insurers are expected to disclose information on any contractual changes occurring during the lifecycle of the contract to the policyholder. See "Guidance Conduct of Insurance Business and Fair Treatment of Customers" published by the Canadian Council of Insurance Regulators.

[24] Commonwell points out the dangers of interpreting the Agreement in the manner urged by BrokerLink because it would set up the situation where BrokerLink could have misleading communications with customers and there would be no way for it to correct this or to ensure that it complies with its regulatory responsibilities.

[25] Commonwell references specific communications in the record from BrokerLink to the customers at issue that are arguably misleading and which do not provide clear information about the customer's options.

[26] There is one communication sent by Mr. Danny Da Costa, a Vice President with BrokerLink, dated November 7, 2025 that appears to have been sent to all customers that implies that the customers do not have the option of staying with Commonwell:

We are writing to share an important update about your insurance policy. BrokerLink is no longer doing business with Commonwell Mutual Insurance Company.....

No action is required by you at this time. BrokerLink will continue to provide you with insurance services that best match your unique needs.....

To ensure a smooth transition when it's time for your policy renewal, we will review your current policy and present you with a new policy that best matches your existing insurance needs, from one of our insurance partners.

[27] There is another communication sent to a customer dated November 19, 2025 that advises the customer that the policy was being transferred to Heartland Mutual Insurance:

Your Personal Auto Insurance policy is due for renewal on January 9, 2026 with Heartland Mutual Insurance.

Your insurance provider has informed us that your policy will be renewed with the following change:

The prior Commonwell Mutual policy carried a limit of \$3000 for OPCF 20 - Loss of Use on both vehicles. The limit with Heartland Mutual Insurance is \$2000.

The Heartland policy was issued without the winter tire discount on the 2020 Hyundai Elantra as we do not have the date that the winter tires were installed on the vehicle.

[28] Notably, the policy that the customer was being transferred to was less advantageous based upon the details and yet again, the customer was not advised that it could choose to stay with Commonwell.

[29] While there is one communication referenced by BrokerLink that does also include the phrase "If you would like to stay with your current insurance provider, please call us to discuss your options" at the end, it is also arguably misleading because the bulk of the communication still indicates that BrokerLink reviewed the customer's requirements and had selected another insurer for it and that BrokerLink would be sending the new policy to the customer.

[30] Commonwell also argues that because it is a mutual company and because its policy holders are members or owners, the customers play a role in governance, including by electing individuals to the Board. Upon the termination of the Agreement, if the customer was automatically enrolled in a replacement policy, and it was prevented from having communications

with the customer to provide information on options and consequences, the customer could lose its rights as an “owner”. These include the right to vote and participate in Commonwell and any future distributions of cumulative surplus that may be provided to Members. Notably, the preamble to the Agreement specifically notes that Commonwell would, from time to time, be communicating with policyholders for the purpose of improving customer service, “We are a “Mutual” COMPANY and because our policyholders are MEMBERS of the COMPANY, the COMPANY has certain legal obligations to policyholders.”

[31] Commonwell explains that because of its obligations as an insurer, and mutual company it determined that it would prepare a communication to the Members to ensure that they were properly informed and had enough time to make an informed decision about an insurance provider.

[32] On September 17, 2025, Commonwell’s affiant, Mr. Mastrangeli, spoke with Mr. Da Costa who had called him to discuss the termination. During this call, Mr. Mastrangeli advised him that Commonwell was working with all brokers to try to keep its membership base intact for the benefit of its members as a whole. Mr. Da Costa asked him whether Commonwell would be sending a communication to policy holders and Mr. Mastrangeli confirmed it would. He says Mr. Da Costa told him that he would appreciate if Commonwell would not send any communication more than 45 days prior to renewal. Mr. Mastrangeli did not agree but advised that Commonwell was in the process of considering the appropriate time to send its letter and would make a decision in the best interests of Commonwell Members as a whole. Mr. Da Costa did not object or tell Mr. Mastrangeli that Commonwell was prohibited from sending such a communication.

[33] There is an email from Mr. Da Costa dated October 27, 2025 which confirms this discussion and where he says

“As mentioned in our conversation, I asked [Commonwell] would not send out any notices more than 45 days in advance to allow our customer notices to be received first. Our customer notices go out at 60-day mark before renewal, so would appreciate that if you send out any notices that it would be less than that period to eliminate confusion. Thoughts?”

[34] Mr. Da Costa has not provided any affidavit in response to Mr. Masterangeli’s evidence about their conversation although he was available. Rather, Ms. Sheehan, a Director with BrokerLink, provided a response on information and belief. In essence she says that Mr. Da Costa did not understand the scope of the kind of communication that Commonwell would be sending and assumed that it would be similar to form letters other insurers send. However, Mr. Da Costa’s email suggests that he understood that Commonwell’s communication would be similar to BrokerLink’s and would relate to the renewal. He certainly did not suggest there was anything wrong with Commonwell sending a communication and he did not ask for a copy in advance either.

[35] Commonwell says that it sent the first notice on October 20, 2025 to 700 customers related to the expiry of their policies in the belief that Mr. Da Costa did not oppose this. It says it was entitled to do so by virtue of s. 14.3 because it gave the required 30 days’ notice:

14.3 The Broker consents to the Company, as a result of its relationship with the insured's, communicating directly from time to time with the insureds for the following purposes:

(i) Adjusting Claims

(ii) Annual Statements

The Broker acknowledges that the Company may, as a result of its relationship with the insured's, need to communicate directly from time to time with the insured for other purposes, and consents to the Company doing so provided it gives the Broker 30 days advance notice of any such other direct communication

[36] To be fair, the notice was not in writing, and any notices required by the Agreement are required to be given in writing by s. 8.

[37] But again, the language of s. 14.3 is permissive. There is nothing in it that prohibits Commonwell from communicating with customers absent consent from BrokerLink or a written notification. While this prohibition could be implied, there is a very clear provision cited below (s. 14.4) prohibiting Commonwell from using information as to expiry dates of policies in any of its marketing. Since the parties set out the prohibition regarding the use of expiry dates, it is unclear why they did not clearly express a prohibition of Commonwell communicating with clients. Again, there is an argument that this is because any such prohibition would run afoul of the regulatory requirements. As well, if Commonwell was prohibited from marketing to clients altogether or communicating with them in matters unrelated to adjusting claims or annual statements without BrokerLink's consent, s. 14.4 below would be unnecessary.

[38] I am satisfied that both BrokerLink and Commonwell have arguable positions as to the proper interpretation of the Agreement and whether Commonwell was entitled to communicate with customers in the way that it did. Thus, BrokerLink has established a serious issue to be tried.

[39] However, I am not satisfied that BrokerLink has demonstrated a strong *prima facie* case that the Agreement prohibits Commonwell from having had these communications. Both positions are arguable and ultimately, the interpretation of the Agreement may depend upon the surrounding circumstances proven, which may include the regulatory context which may require Commonwell to communicate with its customers regarding any important matters concerning their policies.

#### *Breach of Confidence*

[40] The elements of the tort of breach of confidence are: i) the documents have a quality of confidence, 2) the documents were imparted in circumstances importing an obligation of confidence, and 3) they were used in an unauthorized manner: *Cantol v. State Chemical*, 2019 ONSC 531 citing *RBC Dominion Securities* at para 55. *Boehmer* at para 62 citing *Stenada Marketing Ltd. v Nazareno*, [1990] B.C.J. No. 2118; *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574 at para 152.

[41] Section 14.4 of the Agreement provides as follows:

#### 14.4 Ownership of Expired Policy Documentation:

(i) Subject to section 14.3(ii) below, the use and control of expirations, including those on direct-billed business, the records thereof, and the BROKER's work product, shall remain in the undisputed possession and ownership of the BROKER. The COMPANY shall not use its records of those expirations in any marketing method for the sale, service or renewal of any form of insurance coverage or other product which shall abridge the BROKER's rights of ownership, use and control, nor shall the COMPANY refer or communicate this expiration information to any other BROKER, company, or to any other interested party.

[42] BrokerLink argues that that since Commonwell delivered the notices to the customers, it must have used BrokerLink's proprietary customer information and/or proprietary information as to the expiry dates of the policies.

[43] Commonwell's position is that Mr. Da Costa specifically conceded that Commonwell could communicate with the customers prior to the expiration date which implicitly means that they would be using the information as to the expiration dates with respect to the customers that it sent the first notice to. The email from Mr. Da Costa dated October 27, 2025 also supports Commonwell's evidence in this regard.

[44] Nevertheless, I am satisfied that BrokerLink has established a substantial issue to be tried in respect of its breach of confidence claim with respect to the notices that Commonwell sent to 700 customers which was related to the expiry of their policies.

[45] As the further notice sent by Commonwell on November 28, 2025 was unrelated to the expiry dates of the policies, s. 14.4 would arguably not apply. It is unclear how this notice would have constituted any breach of confidence as such. Notably, these customers were also Commonwell's. Communicating with them did not require the use of any customer list since Commonwell already had that information by virtue of having written policies for them and as noted, this subsequent communication was not related to the expiry dates referenced in s. 14.4.

#### **Issue 2: Has the plaintiff demonstrated irreparable harm?**

[46] The plaintiff has failed to demonstrate that it will suffer irreparable harm if the injunction does not issue.

[47] In *RJR MacDonald*, at p. 341, the Court described irreparable harm as follows:

“Irreparable” refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision. (*R.L. Crain Inc. v. Hendry* (1988), 48 D.L.R. (4<sup>th</sup>) 228 (Sask. Q.B.)); where one party will suffer permanent market loss or irrevocable damage to its business reputation (*American Cyanamid, supra*); or where a permanent loss of natural resources will be the result when

a challenged activity is not enjoined (*MacMillan Bloedel Ltd. v. Mullin*, [1985] 3 W.W. R. 577 (B.C.C.A.)). The fact that one party may be impecunious does not automatically determine the application in favour of the other party who will not ultimately be able to collect

[48] The plaintiff's evidence as to irreparable harm must be clear and not speculative: *2158124 Ontario Inc. v. Pitton*, 2017 ONSC 411.

[49] Absent clear evidence that irreparable harm will result, an interlocutory injunction should not be granted: *Stress-Crete Limited v. Harriman*, 2019 ONSC 2773, at para. 58. It is well established that irreparable harm is not made out simply because damages may be difficult to quantify. The plaintiff must prove that the alleged harm cannot be quantified in monetary terms: *Stress-Crete*, at para. 59.

[50] BrokerLink argues that it will suffer irreparable harm that cannot be quantified in monetary terms being loss of business opportunities, damage to customer relationships and reputational harm.

[51] BrokerLink has 12,600 customers with Commonwell polices. Initially, as noted, Commonwell sent notifications to only 700 customers. However, there was a standstill agreement for a period of time. As also noted, after it expired, on November 28, 2025, Commonwell sent a notice to all of these customers that was unconnected to a renewal date.

[52] As of the date of the motion, only 5 customers have terminated their relationships with BrokerLink. Even for these few customers, BrokerLink has provided no evidence that they left because of anything Commonwell did. It concedes that its affiant did not speak to these customers and has no knowledge let alone direct knowledge as to why they left. It also refused to provide the names of employees who did speak to these customers.

[53] BrokerLink also concedes that there is attrition in the industry.

[54] Although BrokerLink argues that it does not immediately know which Commonwell customers it has lost or will lose, it will surely be able to figure this out at some point based upon commissions that it no longer receives from such customers. If it loses the customer altogether and this means losses related to other insurance products, it will also be able to calculate this. These losses can be quantified.

[55] In terms of the overall impact on it, BrokerLink provided no evidence as to the number of other insurers who it has agreements with and whose insurance products it sells, how many other customers it has, or how large a component of its customer base relates to customers who purchased Commonwell insurance products. As such, it has not demonstrated any significant impact on its overall business.

[56] While it argues that the notices sent by Commonwell have undermined BrokerLink's role as an active, engaged and trusted brokerage it is not clear what this means. The customers at issue would be accustomed to receiving communications from both BrokerLink and Commonwell because Commonwell communicates with these customers directly regarding their policies. BrokerLink provided no letters from customers who expressed a loss of faith or trust as a result of the notices. It is unclear why the notices would have this kind of an impact in any event. The

notices do not disparage BrokerLink. They set out factual information that the Agreement was terminated and provide information on the customer's options.

[57] BrokerLink is able to and has indeed also written to these customers.

[58] BrokerLink also says that the notices have incited confusion and worry about the customers' status of their insurance coverage. This could occur in any event upon the customer learning about the situation even if it received the notification from BrokerLink, because BrokerLink would be trying to find a different insurer for the customer. BrokerLink has only been able to reference two examples of communications from customers expressing such concerns. If there is confusion, it may very well be because of some of the notifications that BrokerLink has sent out referenced above that do not clearly set out the customer's options and at least imply that the customer does not have a choice.

[59] As to reputational harm, Ms. Sheehan, BrokerLink's Director of Broker Services and Operations, gives the following evidence:

63. I believe that [the notice] has caused and will continue to cause BrokerLink to suffer reputational harm. As explained above, it created confusion and worry among BrokerLink's customers. This adversely affects how BrokerLink's existing and prospective customers and industry partners view BrokerLink.

64. In the insurance brokerage industry, brand recognition and reputation are critical assets, and once a negative reputation takes hold it is difficult to reverse. The full extent of such harm is impossible to track and quantify with precision because it often occurs informally, including through word-of-mouth regarding the broker's customer service, and may not be reflected in formal customer complaints or other available data.

[60] This evidence is highly speculative, conclusory, and insufficiently particularized or supported. Again, there is no evidence from any customers or industry partners indicating that the way they feel about BrokerLink has changed as a result of the notices.

[61] Again, it is not as if Commonwell has approached the customers to disparage BrokerLink. It has given notices, (perhaps in breach of the Agreement) that BrokerLink will no longer be selling Commonwell insurance and offering to continue it. Nothing in the notices is untrue. While this could cause the loss of the customer who may not want the bother of changing insurers, it is unclear what the reputational harm is or why this would cause BrokerLink to have a negative reputation. There is no evidence linking the communication to how BrokerLink's customers would view BrokerLink and not even anything logically connecting any alleged reputational harm or alleged loss of goodwill to the contents of the notices. Since the customers would not be privy to the Agreement, they would not know about the provisions of s. 19.5 even if it means what BrokerLink alleges. As well, because these customers would be accustomed to communicating with both Commonwell and BrokerLink and would understand the different roles that they play with Commonwell being the insurer and BrokerLink being a broker.

[62] The cases that BrokerLink cites on the difficulty of assessing reputational harm or loss of goodwill confirm there is no hard and fast rule that loss of goodwill/reputational harm can never be quantified and/or contain contractual presumptions of irreparable harm which does not exist in this case. These cases also confirm there must be clear evidence as to this harm which does not exist in this case: See for example: *Stress-Crete Limited v Harriman*, 2019 ONSC: 2773 ("Stress-Crete"), paras. 58-59, 62, See also *Strength-N-U Inc. v. Silva*, 2024 ONSC 4009, paras. 52, 54-56 which relies on *Stress-Crete*.

[63] The case *AllWest Insurance Services Ltd. v. Meredith Phendler*, 2009 BCSC 2 is distinguishable. This case involved an employee who left the plaintiff's employ and joined a competitor where she made use of the plaintiff's customer list. In her employment contract with the plaintiff the defendant specifically agreed that any breach of covenants would result in irreparable harm to the plaintiff that could not be adequately compensated by an award of damages.

[64] The fact that Commonwell advised BrokerLink in September that it intended to provide notifications and that BrokerLink did not object until November 2025 undermines its argument as to irreparable harm. One would have thought if the damage was so irreparable, Mr. Da Costa would not have initially only requested that Commonwell refrain from engaging in any communications until 45 days before the insurance policy was up for renewal or that he would ask to see the communication that Commonwell planned to send.

### **Issue 3: Does the balance of convenience weigh in favour of granting an injunction or denying it?**

[65] The balance of convenience also does not favour granting an injunction.

[66] In *RJR Macdonald*, at p. 342, the Court explained that in considering the balance of convenience the question is which of the parties would suffer greater harm from the granting or refusal to grant an interlocutory injunction pending a decision on the merits. The court further stated at p. 342 that "the factors which must be considered in assessing the 'balance of convenience' are numerous and will vary in each case." When everything else is equal, "it is counsel of prudence to...preserve the status quo": *RJR MacDonald*, at p. 347.

[67] While Ms. Sheehan says that the "relationship belongs to the broker", it is the policyholder who chooses the broker and the insurance provider.

[68] The injunction sought would prevent Commonwell from communicating with policyholders. As noted above, there is evidence that communications that BrokerLink has already sent do not provide full and complete information. If the injunction is granted, BrokerLink will be able to continue sending incomplete information to policyholders which is contrary to their interests.

[69] Further, if Commonwell cannot communicate with Members, there is a risk of non-compliance with its regulatory obligations which include providing Commonwell Members with timely and transparent information. If the injunction issues, then Commonwell will be unable to

correct inaccurate information in the marketplace, such as the inaccurate or incomplete information referenced above.

[70] As well, there is a risk that Members will unwittingly lose ownership rights and the ability to make an informed decision about which coverage is best for them.

[71] I agree that the policy holders can be seen as silent parties in this case and their interests should be considered.

[72] On the other hand, if the injunction is not granted, BrokerLink will be able to continue communicating with policyholders and seek to retain them. It will be able to keep track of any lost commissions.

**Issue 4: Has BrokerLink complied with its obligation to provide an undertaking as to damages?**

[73] BrokerLink did not provide an undertaking as to damages until the day before the argument. It did so by providing the undertaking in an affidavit from Ms. Sheehan on December 17, 2025. At that point, cross-examinations had already been completed. It did not seek leave pursuant to r. 39.02 to file this supplementary affidavit and provided no evidence addressing the test for admission of an affidavit after cross-examination.

[74] Given my other findings above, it is unnecessary to address whether this late delivery was fatal to the motion as argued by Commonwell.

**Conclusion**

[75] Therefore, the motion is dismissed.

[76] Pursuant to s. 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, costs are in the discretion of the court. Rule 57 of the *Rules* sets out the factors which courts should have regard to when awarding costs. The overall objective is “to fix an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding, rather than an amount fixed by the actual costs incurred by the successful litigant”: *Zesta Engineering Ltd. v. Cloutier* (2002), 21 C.C.E.L. (3d) 161 (Ont. C.A.), at para. 4; *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), at para. 26; *Clarington (Municipality) v. Blue Circle Canada Inc.*, 2009 ONCA 722, 100 O.R. (3d) 66, at para. 52; and *G.C. v. Ontario (Attorney General)*, 2014 ONSC 1191, at para. 5.

[77] Commonwell seeks costs in the amount of \$107,044. It has provided a costs outline that addresses the relevant factors set out in r. 57.

[78] Given that BrokerLink sought substantial indemnity costs in the amount of \$215,034 and partial indemnity costs in the amount of \$143,356.32 it is not possible for BrokerLink to take the position that the costs were not reasonably contemplated or unreasonable. In my view, the costs request is reasonable, sufficiently particularized, the rates charged are reasonable as well as the time spent.

[79] Therefore, I award Commonwell costs in the amount of \$107,044 on a partial indemnity basis.

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Papageorgiou, J.

**Released:** January 2, 2026