

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Quality Chain Canada Ltd. v. Xu*,  
2026 BCSC 424

Date: 20260313  
Docket: S257127  
Registry: Vancouver

Between:

**Quality Chain Canada Ltd.**

Plaintiff

And

**Yong (Ivan) Xu, Christopher Leonidas, Wesley Smith  
and Dragonlink Sourcing Ltd.**

Defendants

Before: The Honourable Justice Latimer

## **Reasons for Judgment (Injunction Application)**

Counsel for the Plaintiff:

J. Kondopulos  
K. Wong

Counsel for the Defendants:

D. Chadwick

Place and Date of Hearing:

Vancouver, B.C.  
February 26, 2026

Place and Date of Judgment:

Vancouver, B.C.  
March 13, 2026

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**Introduction**

[1] The plaintiff, Quality Chain Canada Ltd. (the “plaintiff” or “QCC”) seeks various forms of injunctive relief against three former employees – the defendants Messrs. Xu, Leonidas, and Smith (the “Personal Defendants”). The plaintiff also seeks various forms of injunctive relief against “any entities which they own and/or direct, including the defendant Dragonlink Sourcing Ltd. (“DLS”).”

[2] Broadly stated, as against the Personal Defendants, the plaintiff seeks:

- a) an interlocutory injunction which prevents the Personal Defendants from soliciting the vendors, suppliers, customers, employees and distributors of the plaintiff;
- b) an interlocutory injunction which prevents the Personal Defendants from competing with the plaintiff.

[3] Broadly stated, as against the Personal Defendants and any entities which they own and/or direct, the plaintiff seeks:

- a) an interlocutory injunction which requires them to destroy, delete and expunge all items and materials containing the confidential information of the plaintiff and to provide the plaintiff’s counsel with written confirmation of same;
- b) an interlocutory injunction which prohibits them from using the confidential information of the plaintiff.

[4] The application is opposed by the defendants.

[5] I have concluded that I must dismiss the application because of two central difficulties:

- a) The plaintiff has delayed too long in seeking non-competition and non-solicitation injunctive relief.

- b) The plaintiff has not defined what “confidential information” it seeks to protect with sufficient particularity.

**Issues**

[6] The issue for determination is whether granting the plaintiff injunctive relief against any or all of the defendants and/or any entities which they own and/or direct is just and equitable in all the circumstances and, if so, on what terms.

**Background Facts**

**The Parties**

[7] The plaintiff is a wholesale retailer in the business of sourcing and selling truck accessories, including tire chains and protection and traction devices, to customers in Canada, including in British Columbia and Nova Scotia.

[8] The defendant Xu was employed with the plaintiff from July 12, 2012 to June 28, 2024 as its Chief Financial Officer (“CFO”).

[9] The defendant Leonidas was employed by the plaintiff from November 2006 to May 31, 2024. During his tenure, he received various promotions eventually obtaining the role of Director of Supply Chain and Logistics.

[10] The defendant Smith was employed by the plaintiff from September 5, 2006 to May 31, 2024. During his tenure, he received several promotions eventually obtaining the position of Director of Sales.

**Defendants’ Duties**

[11] Each of the Personal Defendants has given substantially similar evidence to the effect that:

- a) They understood that they held a position of trust and responsibility with QCC, which meant that they had certain obligations to QCC both during their employment and for some reasonable duration after their employment ended.

- b) As it relates to QCC's claims, they understood that they should not use QCC's confidential information outside of their employment or solicit their customers. They have at all times, during and after their employment with QCC, acted in accordance with this understanding.
- c) They did not retain or use any of QCC's confidential information after their resignation.

[12] The Personal Defendants have not acknowledged any duty of non-solicitation in respect of the plaintiff's vendors, suppliers, employees or distributors.

[13] There is no evidence of a written employment agreement between QCC and the defendant Leonidas on this application. The defendant Xu specifically denies having such a written employment agreement.

[14] However, there is a written employment agreement between the defendant Smith and QCC that provided, in part:

**7 CONFIDENTIALITY AND NON-SOLICITATION AGREEMENT**

7.1 In this paragraph, "Confidential Information" means: all business and trade secrets and confidential information relating to the Company' business, including but not limited to information relating to customers, customer lists or principals, sales, costs, sales costs, product suppliers, product design and development, quality control measures, services, business systems, research, strategies, markets, business plans, marketing plans, programs, software, training manuals, and product follow-up services.

7.2 Any Confidential Information which has been gathered or is being developed or utilized by you while performing your employment duties, or in which the Company is and may become interested, and any resulting trade secrets, copyright, industrial design, patent or trade-mark, will for all purposes and at all material times, both during the continuance of this Agreement or any renewal, and at all times thereafter, are held by you in trust for the exclusive benefit of the Company.

7.3 Neither during the Term of this Agreement, nor any time thereafter will the you [sic] disclose to any corporation, firm, or person other than directors or employees of the Company, or other authorized contractors, any private affairs of the Company or any Confidential Information, nor will you use for any purposes other than carrying out the your responsibilities and duties under this Agreement, any Confidential Information you may acquire.

7.4 You acknowledge that you will not acquire any right, title or interest in or to the Confidential Information, all of such right, title and interest will vest in, and be owned by the Company.

7.5 You also acknowledge that as part of, and within the scope of you performing your duties and responsibilities under this Agreement, will be called upon to design, develop, create, make or produce products and quality control measures and associated documents ("the Works") for the Company. You hereby agree to assign and transfer to the Company, all right, title and interest in and the Works made by the you in carrying out your duties and responsibilities for the Company, including all trade secrets, copyright, industrial designs, patents, trade-marks and all other intellectual property rights of any kind and you agree that the Company will be the exclusive owner of all the Works.

7.6 During the Term of this Agreement and subsequent to its termination, you agree, that upon request, it will return all the Works and copies of the Works, whether in hard copy or electronic format, to the Company and will confirm by written declaration that you do not retain any copies of the Works on his possession. You agree to fully cooperate at all times during and subsequent to the termination of this Agreement, and execute all further documents and carry out of all such acts and things as are reasonably necessary and requested by the Company to confirm the transfer or assignment of ownership of all rights, including all intellectual property rights, effective at or after the Works are created and to apply for and obtain any and all copyright, industrial design, patent and any other intellectual property registrations covering the Works.

7.7 You may be called upon to execute to deliver up, transfer or execute such reasonable documents at the Company's expense under paragraphs 7.5 and 7.6 and you agree this obligation will continue beyond the termination of this Agreement.

7.8 You acknowledge that by virtue of your employment with the Company, all or part of the Confidential Information will be disclosed to you to enable you to carry out your functions and duties, including but not limited to, customers and product suppliers of the Company. You agree that, upon the termination of your employment with the Company for any reason, you will not:

- a. for a period of one year;
- b. within **CANADA**, or such geographic locations as from time to time may be assigned to you,

directly or indirectly, whether as employee, principal, agent, or shareholder of a company or firm or otherwise, contact, or solicit, or aid in the solicitation of, any customers or clients of the Company, for the purpose of selling or supplying, to such clients, any product or services which are competitive with the products or services sold, marketed, licensed or supplied by the Company at the time of the termination of your employment with the Company.

7.9 For the purposes of this Agreement, clients of the Company means any business or organization that:

- (a) was a client of the Company at the time of the termination of your employment with the Company; or

(b) became a client of the Company within six months after the termination of your employment with the Company if you were involved with the marketing effort in respect of such client prior to the termination of your employment with the Company. (Emphasis Added)

[15] The defendant Smith further deposes that regardless of the employment agreement, he understood he was to avoid soliciting QCC's customers for a period of one year.

### **Negotiations to Purchase QCC**

[16] During the course of their employment, and prior to a change of ownership at QCC, the Personal Defendants were involved in negotiations to purchase the company.

[17] It is alleged that, to the extent they did not already have it as a result of their powerful positions within QCC, those negotiations gave the Personal Defendants open book access to all of the plaintiff's confidential information. The negotiations did not result in the Personal Defendants taking control of the plaintiff.

### **The Impugned Conduct**

[18] In January 2024, the defendant Xu met with one of the plaintiff's suppliers, Fan Ding of Eagle Jumbo, in China. The plaintiff and Eagle Jumbo have a verbal agreement pursuant to which Eagle Jumbo will not sell its products to another company in Canada.

[19] The supplier and the defendant Xu give different accounts of that meeting which are not possible to reconcile on the record before me.

- a) According to Mr. Ding, the defendant Xu expressed that if the defendant Smith failed in his attempt to acquire QCC and left the company, that QCC could lose part of its customer base and therefore Eagle Jumbo could potentially lose a significant portion of its business.
- b) According to the defendant Xu, it was Mr. Ding who raised concerns about market conditions and leadership changes at QCC. The defendant Xu

deposes that the conversation was about continuing sales to the defendant Smith in the context of their contemplated purchase of QCC.

[20] In February 2024, while still employed by QCC, the Personal Defendants caused to be created a website representing DLS and outlining its services and products.

[21] The defendant Xu gave the following evidence in respect of the creation of this website:

13. In early 2024, none of Smith, Leonidas or I believed that we had long-term futures at QCC in the event the purchase failed. The idea for DLS arose as a contingency plan out of concern that the purchase would fail.

14. Between about February and May 2024, Smith, Leonidas and I worked on our vision about what DLS would be. Any time spent on the creation of DLS was done outside our regular work hours at QCC and did not detract from the performance of our duties with QCC.

15. Part of the creation of DLS included creation of a prototype website. For the remainder of my employment with QCC, the website was not functional. It remained unpublished, was not visible to the public, and was not shown to anybody else until about November 2024.

[22] In or around May 2, 2024, the defendant Smith provided QCC with notice of his resignation effective May 31, 2024.

[23] On or around May 3, 2024, the defendant Leonidas provided QCC with notice of his resignation effective May 31, 2024.

[24] On or around June 10, 2024, the defendant Xu provided QCC with notice of his resignation effective June 28, 2024.

[25] Mr. Ding deposes that in June 2024, the defendant Xu advised him that without the defendant Smith, QCC might be in serious trouble. This is denied by the defendant Xu who deposes that he did not speak with Mr. Ding in June 2024. The defendant Xu deposes that he did, however, speak to Mr. Ding in May 2024. The defendant Xu deposes:

He requested a call while I was vacationing in China at the time. He had heard about the resignations of Smith and Leonidas and was concerned

about what that meant for the stability of QCC's ongoing leadership and management. He wondered aloud to me whether there was a way that they might be able to stay at QCC. I do not recall saying that QCC "might be in serious trouble", but I am sure I expressed that their departure was a loss due to their longstanding contributions.

[26] Again, this conflict in the evidence is not possible to resolve on this application.

[27] Despite deposing that he did not engage in any solicitation for a period of one year and that DLS did not sell tire chains, I have in the record before me an email authored by the defendant Smith and sent to one of the plaintiff's customers dated June 20, 2024 (the "June 2024 Email"), less than a month after his resignation, and which states, in part:

I'm keeping things quiet as we would like to keep our new company out of QCC earshot for now. I would fill you in over a meeting if you wish.

It is time that I send you an email with our new company information. Over the past 17 years, I've built up a great amount of factory contacts, and as such I've decided to source directly and take care of my past, current, and future customers with factory direct service...

What our company, along with Chris (QCC's Director of Supply Chain) and Ivan (QCC's CFO) are using our diverse strengths to source, 3PL in Asia (if needed), import, and sell factory direct. We have over 19 factories we do business with (in 3 countries) and have a long list of products that would suit you well. Private branding is of course part of the offering to continue the legacy of your powerful company name.

Some of the products are listed below:

...

Tire chain (a market I know very well)

[28] The e-mail is sent from the domain name "dragonlinksourcing.com" and lists the defendant Smith as its Director of Sales.

[29] On July 2, 2024, the defendant Smith followed up with an email (the "July 2024 Email") which states in part:

...Following up on this email, would you like me to send quotes on products I have already sourced? Or would you like me to wait for a list of parts you require a competitive edge on?

Tire chain and Cargo control I will not supply pricing, unless you require a better price point, more protection in the market, and better product support. Let me know what I can help with, and I'll get to work.

FYI, Morfco has plans to expand their MTC line of tire chain into the lower mainland and I'm certain over time competition will become even more sensitive. My hope is to keep CBS as protected and powerful in your respective markets. You have done an outstanding job with tire chain under your Max Parts brand, and I wish to continue that legacy for you all...

[30] DLS was incorporated on July 3, 2024. The defendant Xu is its sole director.

[31] In July 2024, Mr. Ding deposes that he had a video conference with the defendant Smith and discussed the sale of products other than anti-skid tire chains by Eagle Jumbo to the defendant Smith. Mr. Ding deposes that he made clear that Eagle Jumbo would not sell tire chain products to the defendant Smith for the Canadian market.

[32] In October 2024, the plaintiff received a message from a different tire chain supplier based in China with which QCC did not have contact (the "October 2024 Email"). The supplier indicated that a third party had contacted them in China with tire chain specifications asking them to produce tire chains. The supplier indicated their belief that "we trust the inquiries are from QCCCANADA actually". The supplier attached a spreadsheet that included information which QCC alleges is confidential and not in the public domain such as internal QCC part numbers and descriptions.

[33] The plaintiff suspects this information came from the Personal Defendants and that they were seeking an alternate supplier to Eagle Jumbo because of its exclusivity agreement with QCC. This may be an issue that is explored in discovery and at trial; however, it has not proven on the record before me.

[34] As noted, the defendant Xu deposes that DLS's website was not shown to anyone until November 2024.

[35] In December 2024, the defendant Smith contacted Tidal Tractor, a customer of QCCs, and provided a link to DLS's website inviting Tidal Tractor to express interest in anything on the website.

[36] In January 2025, a QCC employee sent a message through DLS's website which read:

Hey guys, I see you posting on the socials and was checking out your site. This picture is ours and we'd appreciate you taking your own and not using ours

<https://dragonlinkesourcing.com/products/dlt-ultra-s-studded-single-tire-chain-with-cams-light-truck-7mm-st320c>.

[37] The defendant Smith deposes:

14. Upon publication of the DLS website, a mistake was made whereby entering "tire chains" in the search bar would display results for tire chains. I have come to further understand that if one clicked on the "products" link and scrolled through enough pages, one could see images of tire chains. There was no customer-facing clickable link and no way for a customer to in fact purchase tire chains.

15. The images of tire chains that appear at Exhibits "N" and "O" to Affidavit #1 of Ms. Endersby were shown on the DLS website between about November 5, 2024, and early January 2025. They were stock images taken from websites of various manufacturers or were otherwise found by general internet searching. They were put in our database as a placeholder by me in the planning stages of DLS in contemplation that DLS may consider entering the market for tire chains at some unknown point in the future once the business was better established. To be clear, DLS has never stocked or sold tire chains.

16. The images appeared due to my mistaken belief that only selected items from our database would appear on the website. None of Xu, Leonidas or I were aware that the images were visible.

17. We first became aware that images of tire chains were showing on the DLS website on about January 16, 2025, when we received an email from Joe Casper of QCC via our web contact form. ...

18. Immediately following the email from Mr. Casper, all images of tire chains were removed from DLS's website and database.

[38] Between January and March 2025, the defendant Smith had further communications with Tidal Tractor. Ms. Endersby deposes that these communications included quotes for the same products as QCC offers and indicated that DLS was sending its products to the Western Canada Market. The defendant Smith deposes that the products discussed were either not offered by QCC or that QCC was not a big seller of the item in question.

[39] Ms. Endersby deposes that as a result of the Eagle Jumbo incidents described in June and September 2024 and the October 2024 Email, the plaintiff determined to review email account activity of the Personal Defendants from when they were employed by QCC.

[40] In December 2024, the plaintiff retained TransPerfect Legal to conduct a forensic investigation of computers said to be used by the Personal Defendants. The report was completed in February 2025.

[41] The forensic investigator deposes that the forensic analysis of the Smith Computer did not identify a user account on the computer that appeared to be associated with Mr. Smith. However, with respect to the Xu Computer and the Leonidas Computer, this investigation revealed that:

- a) While still employed by QCC, both defendants Xu and Leonidas connected an external drive to their respective work computers;
- b) As well, it is alleged that the defendant Xu, during his employment with QCC:
  - i. Used third party software to wipe the data off of both computers;
  - ii. Created a partition on the Xu Computer, mirrored the contents of QCC's server on an unauthorized separate drive and then proceeded to delete the entire drive from the computer;
  - iii. Logged into his computer using his personal email;
  - iv. Sent confidential information about QCC's suppliers and potential suppliers to his personal email as well as to the defendants Smith and Leonidas at email addresses affiliated with DLS;
  - v. Accessed his computer with an email address affiliated with DLS.

[42] These findings are not disputed by the Personal Defendants. In response to these allegations, the defendant Xu deposes that:

- a) It was common for many of the executive team to work from home and to either use external drives when bringing work home or to forward emails to personal accounts for ease of access when not in the office;
- b) He did use third party software to wipe data off of his computer, and the computers used by Smith and Leonidas. This conformed with QCC's IT protocol when an employee departed to prepare the computer for reassignment.
- c) The information sent about QCC's suppliers and potential suppliers was not confidential. Rather, he was bombarded with invitations to purchase from different vendors. One such invitation was not of interest to QCC but was of interest to DLS.

[43] The defendant Xu did not confirm, deny or explain the allegation that he had created a partition on his work computer, mirrored the contents of QCC's server on an unauthorized separate drive and then proceeded to delete the entire drive from the computer. He did, however, deny using any of QCC's confidential information outside of his duties with QCC or retaining any of QCC's confidential information in any form after his resignation.

[44] In or about January 2025, the Personal Defendants entered into a joint venture with a Chinese tire chain company and formed a new company called Dragonlink Traction Products Ltd. ("DLT"). DLT was incorporated on May 31, 2025. DLT was not a party to this proceeding at the time of this application, although the plaintiff intends to add them as a party.

[45] In or around April 2025, the defendant Smith had communications with Inland Truck and Equipment ("Inland"), another customer of QCC's, about tire chains. The defendant Smith deposes that these communications were initiated by Inland; however, the record does not include all communications between these parties.

The defendant Smith acknowledges that DLT sold tire chains to Inland in October 2025.

**Procedural Background**

[46] On September 19, 2025, the plaintiff filed the within notice of civil claim. The claim alleges breach of contract, breach of fiduciary duty, breach of confidence and breach of common law duties of good faith, fair dealing, loyalty, honesty and fidelity. It further pleads the torts of conversion, intentional interference with contractual or economic relations, detinue and civil conspiracy. It further seeks a declaration of unjust enrichment.

[47] On October 9, 2025, the defendants filed the within response to civil claim and a counterclaim. In the counterclaim, the defendants seek damages for breach of contract, a declaration of unjust enrichment and damages.

[48] On October 31, 2025, the plaintiff filed a response to counterclaim.

[49] On January 26, 2026, the plaintiff filed the within notice of application with a hearing date set for February 26, 2026. The hearing proceeded as scheduled.

[50] The plaintiff seeks the following relief:

- a) A prohibitive injunction restraining the Personal Defendants from soliciting of QCC vendors, suppliers, customers, employees and distributors;
- b) A prohibitive injunction restraining the Personal Defendants from competing with QCC;
- c) A mandatory injunction requiring the Personal Defendants and any entities which they own and/or direct, including DLS, to destroy or permanently delete or expunge all items or materials containing the confidential information or intellectual property of QCC and a mandatory injunction

requiring them to provide QCC's counsel with written confirmation of same;

- d) A prohibitive injunction restraining the Personal Defendants and any entities which they own and/or direct, including DLS, from using the confidential information or intellectual property of QCC in any way.

## **Analysis**

### **The Test for Injunctive Relief**

[51] Generally, injunctive relief is available to an applicant who demonstrates that:

- 1) there is a serious question to be tried;
- 2) they will suffer irreparable harm if the injunction is refused; and
- 3) the balance of convenience lies with them.

*RJR–MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117 (S.C.C.) (*RJR*).

[52] Injunctions are equitable remedies and the fundamental question in each case is whether the granting of the injunction is just and equitable in all the circumstances of the case: *British Columbia (Attorney General) v. Wale*, 1986 CanLII 171 (B.C.C.A.), [1987] 2 W.W.R. 331 (B.C.C.A.), aff'd 1991 CanLII 109 (S.C.C.), [1991] 1 S.C.R. 62.

[53] The first stage is generally viewed as a low threshold and does not require an extensive review of the merits. However, the threshold is modified when the injunction involves the enforcement of a restrictive covenant like a noncompetition or non-solicitation provision, and where the order sought is a mandatory injunction where a party would be required to take positive action: *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5, at para. 15; *Wizedemy Inc. v. Karras*, 2024 BCSC 630, at para. 33, aff'd 2024 BCCA 301.

[54] I find that the strong *prima facie* case standard applies to the relief sought at the notice of application, Part 1, paragraphs 1(a)-(d) for the following reasons:

- a) The relief sought at paragraphs 1(a)-(c) is broad. It would enjoin competition until the conclusion of this action. It is not limited to non-solicitation of customers it extends as well to vendors, suppliers, employees and distributors of the company.
- b) With respect to Mr. Smith, the contractual prohibition on soliciting customers has already expired.
- c) With respect to all of the Personal Defendants, as I discuss below, while certain duties of non-competition and non-solicitation may survive employment that only extends only for a reasonable period of time. By the time this matter reaches trial, any duties the Personal Defendants may owe to QCC may have expired.
- d) With respect to relief sought at paragraphs 1(d), the order sought is a mandatory injunction requiring the defendants (and also potentially non-parties) to take positive action.

[55] I find that the serious issue to be tried standard applies to the relief sought at the notice of application, Part 1, paragraph 1(e).

**The plaintiff has delayed too long in seeking non-competition and non-solicitation injunctive relief**

[56] Despite the breadth of the order sought, the submission of the plaintiff was focused on solicitation of QCC's customers and suppliers and that will form the focus of these reasons.

[57] Once the employment relationship ends, the non-fiduciary employee is permitted to engage in fair competition with a former employer. The right to compete includes, among other things, the right to solicit the customers of the former employer "whose names and addresses he has learned during the period of his service": *GEA Refrigeration Canada Inc. v. Chang*, 2020 BCCA 361, at para. 143.

[58] In contrast, fiduciary employees may face certain restrictions on the ability to compete including that they may not actively solicit customers of the former

employer for a reasonable period of time: *GEA Refrigeration Canada Inc.* at para. 144; *Can. Aero v. O'Malley*, [1974] S.C.R. 592, 1973 CanLII 23 (S.C.C.), at 620.

[59] As I have set out above, each of the Personal Defendants has acknowledged that they had a duty not to solicit QCC's customers, at least for a reasonable period of time. They each depose that they did not solicit QCC's customers at all, or not for at least a year.

[60] Each of the Personal Defendants also gives substantially similar evidence in respect of the nature of the business of DLS and, specifically, that it does not directly compete with QCC in any substantial way. To quote from one of the substantially similar affidavits, the defendant Xu deposes that:

DLS's business is fundamentally different from QCC's business. DLS does not directly compete with QCC in any substantial way. Most pertinent to QCC's claim is that DLS has never sold tire chains.

[61] However, as I have set out above, there is independent documentary evidence which demonstrates both that at least one of the Personal Defendants did solicit at least one of QCC's customers shortly after his resignation, and that he offered tire chains for sale, even if no sale materialized.

[62] The clearest evidence of these facts in the record before the Court is the June 2024 Email sent less than a month after the defendant Smith's resignation and the July 2024 Email sent shortly thereafter.

[63] Then, there is the email from the defendant Smith in December 2024 inviting another of QCC's customers to express interest in anything on the DLS website. According to the defendant Smith, in December 2024, tire chain products were inadvertently advertised on the DLS website.

[64] Finally, communications with a third of QCC's customers in early 2025 about products that the defendant Smith says were not sold by QCC or did not form a large part of QCC's sales and which Ms. Endersby says are sold by QCC.

[65] While it may be strictly accurate that DLS "has never sold tire chains", the plaintiff has established a strong *prima facie* case that at least the defendant Smith

was soliciting QCC's customers by offering tire chains for sale under the banner of DLS and doing so starting as early as approximately one month after his resignation.

[66] I have also outlined above, certain evidence of the defendant Xu's communications with one of QCC's suppliers. It is alleged that the defendant Xu disparaged QCC's management both before and after his resignation. This is denied by the defendant Xu.

[67] In their application response, the Personal Defendants submit that there is no evidence to show that they solicited customers or suppliers and that the one-year period of non-solicitation has come to an end. Orally, in the face of this evidence, the Personal Defendants' counsel acknowledged that the Personal Defendants may not have acted "perfectly" but that nothing resulted from this conduct as no sale of tire chains was made.

[68] That will be an issue for trial.

[69] However, on this application the central difficulty with the plaintiff's request for injunctive relief in respect of competition and solicitation is the period of time that has elapsed since the Personal Defendants resigned from their positions.

[70] As noted above, the defendant Smith's written employment agreement contained a twelve-month non-solicitation clause that pertained only to customers. That has come to an end.

[71] Here, I am satisfied and the Personal Defendants admit, that even without such a written agreement each of the Personal Defendants owed an obligation not to solicit QCC's customers for a reasonable period of time. If an injunction were to issue, then I am satisfied that a reasonable period of time would be approximately twelve months.

[72] Unfortunately, this action was not even commenced until in or around 16 months after the Personal Defendant's resigned. By the time of the release of these reasons, approximately 20 months will have passed.

[73] The plaintiff argues that in the circumstances of this case where there is evidence that the Personal Defendants have been in breach of their duties during the reasonable period of time in which those duties applied after their resignation, the Court should extend those duties.

[74] However, I am advised that no trial date has yet been set and this action remains in its early stages. In these circumstances, I cannot conclude that to restrain the defendants until trial would be in the interests of justice. If this application had been brought earlier, I would have entertained an order prohibiting solicitation of QCC's customers. However, in my opinion, it is not warranted at this time, due to the passage of time.

[75] The delay in bringing forward the application undermines the plaintiff's position at each stage of the test for injunctive relief. It makes the merits of the claim that a continuing duty exists weaker. It undermines the assertion that interlocutory relief is necessary to avoid irreparable harm. It also tips the balance of convenience in favour of the defendants.

[76] This decision relates exclusively to the question of interlocutory relief. It will be open to the trial judge to determine that the plaintiff's claim for damages may exceed what I have found to be a reasonable period of time on the record before me.

**Inability to Identify What Is “Confidential Information”**

[77] The Personal Defendants each acknowledge they have an ongoing duty not to use QCC's confidential information outside of their employment. They each depose that they have not retained or used such confidential information.

[78] Nevertheless, they do not consent to an injunction prohibiting use or retention of such information because they say the scope of “Confidential Information” is inadequately described in the pleadings or materials before the Court.

[79] I am troubled that the defendant Xu did not confirm, deny or explain the allegation that his computer was used, during this employment with QCC, to make a

partition on his work computer, mirror the contents of QCC's server on an unauthorized separate drive and then delete the entire drive from the computer.

[80] Nevertheless, I am persuaded by the force of the defendants' argument that a party seeking an injunction with respect to confidential or proprietary information must identify that information with some reasonable degree of specificity: *JTT Electronics Ltd v. Farmer*, 2014 BCSC 2413 at paras. 39–43.

[81] In *JTT Electronics Ltd*, Justice Voith as he then was, set out the description of the scope of the order sought:

[30] Both aspects of the first category of relief sought by the plaintiffs, that is enjoining the use of and compelling the delivery of “confidential information”, require that the plaintiffs do more than establish a “serious question” that they possess some form of confidential information and that the conduct of the Personal Defendants indicates that this information may be lost or misused. It is also necessary that the plaintiffs identify, with some reasonable degree of precision, what they say that confidential information is. This is so regardless of whether the plaintiffs seek to protect JTT's confidential information in contract or as a breach of confidence or on the basis that the Personal Defendants were fiduciaries or on the basis that they owed JTT a duty of good faith as employees.

[31] The plaintiffs are unable to do so. The relief sought in the notice of application is entirely generic:

1. An interlocutory injunction prohibiting and enjoining the Defendants VanWerkhoven and Potter, and each of them, until the hearing of the trial of this action, from dealing with, using, reproducing, enabling access to or commercializing for any purpose, in any way, sort or otherwise, confidential information and proprietary information, including copyrights, patent rights and other intellectual property rights, which are owned exclusively by the Plaintiff JTT Electronics Ltd. (“JTT”);

...

4. An Order requiring the Defendants VanWerkhoven and Potter, and each of them, to deliver up to JTT all confidential information and proprietary information of JTT, directly or indirectly within their possession or control, including intellectual property rights and technology assets.

[32] After I expressed some concern with the foregoing description of confidential information, I was provided with a further draft order. That draft order proposed the following language:

1. The Defendants VanWerkhoven and Potter, and each of them are prohibited and enjoined, until the hearing of the trial of this Action

or March 15, 2016, which ever date comes first, from directly or indirectly dealing with, using, reproducing, enabling access to or commercializing for any purpose, in any way, sort or otherwise, confidential information and proprietary information, including copyrights, patent rights and other intellectual property rights, which are owned exclusively by the Plaintiff JTT Electronics Ltd. (“JTT”);

...

3. An Order requiring the Defendants VanWerkhoven and Potter, and each of them, to deliver up to JTT all confidential information and proprietary information of JTT, directly or indirectly within their possession or control, including but not limited to intellectual property rights and technology assets.

4. For the purpose of this Order, confidential information and proprietary information means any information of JTT disclosed to or acquired by the Defendants Potter or VanWerkhoven while employed by JTT, whether as an employee, officer, or serving as director, in tangible or intangible form which, by the nature of the circumstances surrounding disclosure ought, in good faith, to be understood to be treated as confidential. Confidential Information includes: (i) non-public information concerning the Intellectual Property Rights of JTT, including any ideas, improvements, know how, research, inventions, innovations, products, services, scientific or other formulae, patterns, processes, methods, compositions, processes, procedures, tests, treatments, developments, technical data, designs, devices, patterns, concepts, computer code or programs, that relate to the business or affairs of JTT or its subsidiary or affiliated companies, or that result from its marketing, research and/or development activities; (ii) the fact that JTT is working on any given project or business endeavour; (iii) non-public information concerning the business or finances of JTT; (iv) any other non-public information the disclosure of which might harm or destroy a competitive advantage of JTT; or (v) trade secrets of JTT which are the expression, tangible or otherwise, of unique ideas or specialised compilations of information or data, whether patentable or not, that are not generally known, that are useful or capable of use in the trade or business of JTT, or that have economic value to JTT as a result of not being known generally (“Trade Secrets”), and which may be embodied in computer software source code, know-how, show-how, written documents, patterns, charts, drawings, specifications, sources of inputs, procedures, compilations, techniques, processes, methodologies, formulas, and similar information.

[33] I do not consider that the foregoing language advances matters in any appreciable way. (Emphasis Added)

[82] In this case, QCC has pleaded that their confidential information includes “without limitation, information about the company’s business operations, finances, customers, employees, suppliers (including their identity), IT and other trade

secrets”. As well, QCC refers to product information and intellectual property of QCC. In the affidavit of Ms. Endersby, reference is also made to a “list of items with associated part numbers and descriptions” some of which were created by QCC. I have also had regard to the definition of “Confidential Information”, set out above, and which is included in the defendant Smith’s employment agreement.

[83] I am unable to meaningfully distinguish the descriptions of confidential information provided in the record before me from that which this Court found to be insufficient in *JTT Electronics Ltd.*. That case also considered a contract which defined “confidential information”, it considered similarly generic pleadings, and a more precise draft order. In that case, Justice Voith held, at para. 38, that the language used “is language that could pertain to virtually any business that made virtually any product. The fact that further or more numerous generic descriptions of confidential information are added does not add either precision or detail.” Those same comments are apt in this case.

[84] In *JTT Electronics Ltd.*, the Court explained that the need to identify with some reasonable degree of specificity what a plaintiff asserts is confidential or proprietary serves three important and related functions. First, it enables a defendant to respond to an application and the relief sought in the application, and to bring into question whether the purported confidential information is in fact confidential or whether it is information that is in the public domain. Second, if a plaintiff can establish that specific information in its possession is confidential, and the remaining elements of an injunction are made out, the defendant is put on notice, in the form of an order, of what it is that he or she can or cannot do. Third, in the event that there is an allegation that a defendant has not complied with the terms of an order restraining the use of specific confidential information, the court is in a position to address the alleged breach: *JTT Electronics Ltd.*, at paras. 39–41.

[85] In this case, absent a more reasonable level of precision and definition, my concern is that none of these purposes can be met. While counsel argued that *JTT*

*Electronics Ltd.* is an outlier in the jurisprudence, I have not been referred to any authority which puts into question the validity of the analysis in that case.

[86] Whether a lack of clarity in the terms of the injunctive relief a plaintiff seeks is a matter which goes to the balance of convenience or whether it gives rise to a stand-alone issue is not clear: *JTT Electronics Ltd.* at paras. 49–51.

[87] In this case, I am satisfied that the form of order being proposed by the plaintiff lacks the clarity and specificity which is required and which would enable the Personal Defendants to regulate their future conduct. Accordingly, I decline to grant the plaintiff the relief which seeks to restrain the Personal Defendants from using “confidential information” as well as the relief which would compel them to deliver up all “confidential information” in their possession.

“Latimer J.”