Court of King's Bench of Alberta

Citation: Intellimedia Limited Partnership v Jawad, 2026 ABKB 247

Date: 20260330
Docket: 2501 06144
Registry: Calgary

Between:

Intellimedia Limited Partnership by its General Partner Intellimedia GP Inc.

Plaintiff/Applicant

- and -

Ahmad Jawad and DOCEOAI Analytics Inc.

Defendants/Respondents

Reasons for Decision
of the
Honourable Justice M.A. Marion

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I. Introduction

[1] Intellimedia Limited Partnership (**ILP**), by its General Partner Intellimedia GP Inc., applies (**Application**)[1] for an interlocutory injunction against the defendants (**Defendants**), Ahmad Jawad (**Jawad**) and DOCEOAI Analytics Inc. (**DAI**).

[2] Jawad was a co-founder and CEO of Intellimedia Incorporated (**IINC**), an Alberta software company focussed on the education sector. One of IINC's software products was known as "**Dossier**". IINC's Dossier customers included school districts in the kindergarten to grade 12 (**K-12**) sector in Alberta (and likely elsewhere).

[3] In April 2020, ILP acquired the assets of IINC pursuant to an asset purchase agreement (**APA**) and, as part of the transaction, Jawad was hired as CEO of ILP pursuant to an employment agreement (**Employment Agreement**). Jawad remained CEO of ILP until summer 2024.

[4] ILP asserts that Jawad, including through his corporation, DAI, breached his fiduciary duties and duties of confidence, the Employment Agreement, and certain restrictive covenants (**Restrictive Covenants**) included in the APA (a non-compete clause (**Non-Compete Clause**[2]) and a non-solicitation clause (**Non-Solicitation Clause**[3])). The Application targets, among other things, the Defendants' work in creating a software product or application (**DAI App**), that uses artificial intelligence (**AI**), which the Defendants appear poised to launch at the end of May 2026. ILP asserts that the DAI App will directly compete with Dossier and cause ILP irreparable harm.

[5] ILP seeks an injunction to restrain the Defendants from competing with it, including through any software product competitive with ILP and intended for use by K-12 education institutions in several Canadian provinces and territories (which ILP asserts includes the DAI App), from inducing ILP's customers, suppliers and others from ceasing to do business with or purchase products from ILP, and from soliciting any of ILP's employees and independent contractors.

[6] The Defendants oppose the Application. They argue that ILP does not meet the requirement of a strong *prima facie* case to support injunctive relief for several reasons; that ILP has not established that it will suffer irreparable harm; that the Injunction is, in effect, a *quia timet* injunction and ILP has not met the requirement to show a high probability that the feared harm will occur and is imminently threatened; and that the balance of convenience favours the Defendants.

[7] For the reasons and on the terms set out below, I grant an injunction against the Defendants (but not on the specific terms requested by ILP).

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[1] I permitted ILP's application to be amended after oral submissions. A reference to the Application is a reference to the Amended Application.

[2] For the purposes of these Reasons, the Non-Compete Clause is limited to clause 5.4(a)(i) of the APA. ILP does not rely on clause 5.4(a)(ii) in the Application to support the injunction.

[3] Clause 5.4(b) of the APA.

II. Record

[8] The record before me is:

(a) an April 10, 2025 affidavit (filed April 17, 2025) of Mathew Burpee (**Burpee**), a director of ILP's general partner;

(b) an October 8, 2025 Burpee affidavit (filed January 22, 2026);

(c) a transcript of the October 10, 2025 questioning of Burpee on his affidavits, with exhibits;

(d) an October 29, 2025 Jawad affidavit (filed November 3, 2025); and

(e) a transcript of the November 24, 2025 questioning of Jawad on his affidavit, together with undertaking responses (**Jawad Transcript**).

[9] In Jawad's questioning, a YouTube video recording of a presentation given by Jawad (**May 2024 Presentation**) was put to him and adopted. The parties agreed that the May 2024 Presentation should be reviewed and form part of the record before me. The parties provided me the YouTube link.[4] I have reviewed the May 2024 Presentation and it is part of the record.[5]

III. Issues

[10] The issue in this Application is whether to grant the requested injunction.

[11] The Court may grant an interlocutory injunction in "all cases in which it appears to the Court to be just or convenient that the order should be made", and an order may be made unconditionally or on any terms the Court thinks just: *Judicature Act*, RSA 2000, c J-2, s 13(2).

[12] The usual three-part test for determining whether a court should exercise its discretion to grant an interlocutory injunction is: (1) is there a serious issue to be tried; (2) would the person applying for the injunction suffer irreparable harm if the injunction is not granted; and (3) is the balance of convenience in favour of granting the injunction or denying it: ***Google Inc v Equustek Solutions Inc***, 2017 SCC 34 at para 25, citing ***RJR-MacDonald Inc v Canada (Attorney General)***, 1994 CanLII 117 (SCC), [1994] 1 SCR 311. The fundamental question is whether the granting of an injunction is just and equitable in the circumstances of the case, which will be a context-specific determination: ***Google Inc*** at para 25; ***Brown v Alberta***, 2025 ABCA 146 at para 13.

[4] https://youtu.be/fsarV7ngENE?si=smKZRwHCjUB-Gtrg

[5] It is important that the May 2024 Presentation is physically preserved to be part of the record in control of the Court, in case the YouTube link becomes non-functional in the future. I direct the parties to work together to put the May 2024 Presentation onto a USB and provide it to my office so it may be formally filed in this matter. If it is not possible to do this, the parties are directed to take screenshots of the presentation slides and to have a transcript of the presentation prepared (with a reference to when each slide is displayed), and to jointly provide that to my office for filing. If further directions are needed, or if a dispute arises, with respect to this, the parties may reach out to my office.

[13] The parties disagree on the appropriate merits-standard under the first part of the tripartite test. Accordingly, the Application requires me to consider these issues:

(a) What is the applicable merits-standard for this injunction application?

(b) Has ILP met the applicable merits-standard?

(c) Has ILP established irreparable harm if an injunction is not granted?

(d) Does the balance of convenience favour an injunction?

IV. Analysis

A. What is the Applicable Merits-Standards for this Injunction Application?

[14] The serious issue or question to be tried standard is a low threshold that is met where the claim is not frivolous or vexatious (i.e. is arguable): ***Avmax Aircraft Leasing Inc v Air X Charter Limited***, 2022 ABCA 252 at para 68; ***RJR-MacDonald*** at 334-335, 337.

[15] A strong *prima facie* case requires the applicant to show a case of such merit that it is "very likely to succeed at trial", or that upon a preliminary review of the case, the court is satisfied that there is a "*strong likelihood* on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations" in the claim [emphasis in original]: ***R v Canadian Broadcasting Corp***, 2018 SCC 5 at para 17; ***Chatters Limited Partnership v Chatters Deerfoot Meadows Limited***, 2025 ABKB 536 at paras 36-37, citing ***2145448 Alberta Ltd v Beverage Container Management Board***, 2024 ABKB 113 at para 39; ***ANC Timber Ltd v Alberta (Minister of Agriculture and Forestry)***, 2019 ABQB 710 at para 80.

[16] As noted, the parties disagree on which standard applies.

1. Legal Framework re: Applicable Merits-Standard

[17] There are several instances where the strong *prima facie* case standard can replace the usual serious issue to be tried standard. Some of these are engaged by the parties' arguments and are discussed below.

[18] First, a strong *prima facie* case standard can apply where the claim is based on an employee's breach of fiduciary duty or misappropriation of confidential information where it would lead to a prohibition equivalent to the enforcement of a restrictive covenant in the restraint of trade: ***1731271 Alberta Inc v Reimer***, 2024 ABKB 446 at paras 22-26; ***Orbis Engineering Field Services v Taifa Engineering Ltd***, 2019 ABQB 510 at para 57; ***GG & HH Inc v 2306084 Alberta Ltd***, 2022 ABQB 58 at paras 90-92; ***SHAC Solutions Inc v Guenther***, 2024 ABKB 145 at para 16; ***Jardine Lloyd Thompson Canada Inc v Harke-Hunt***, 2013 ABQB 313 at para 16; ***Easyhome Ltd v Casey***, 2009 ABQB 735 at para 23; ***Adler Firestopping Ltd v Rea***, 2008 ABQB 95 at paras 26-27.

[19] Second, a strong *prima facie* case standard will usually apply to enforce a restrictive covenant in the employment context, as it is in the nature of a restraint of trade: see ***Chatters*** at

paras 31-32, citing ***City Wide Towing and Recovery Service Ltd v Poole***, 2020 ABCA 305 at para 26, leave to appeal to SCC refused, 2021 CanLII 13260 (SCC)[***City Wide Towing***]; ***Renfrew Insurance Ltd v Cortese***, 2014 ABCA 203 at para 8; ***Occidental Petroleum Corporation v Boguslawski***, 2025 ABKB 578 at para 7.

[20] However, the strong *prima facie* case standard does not apply where the restrictive covenants are linked to a contract for the sale of a business: ***Payette v Guay inc***, 2013 SCC 45 at paras 35-39; 45, citing ***Elsley v J G Collins Insurance Agencies Ltd***, 1978 CanLII 7 (SCC), [1978] 2 SCR 916 and ***Shafron v KRG Insurance Brokers (Western) Inc***, 2009 SCC 6; ***Karavos v Smith***, 2021 ABQB 714 at paras 11-16; ***People Corporation v 2578649 Alberta Ltd et al***, 2024 ABKB 375 [***People Corporation #1***] at paras 15-21; ***Dentalcorp Health Services Ltd v Dr Kenneth Hamin Dental Corporation***, 2024 MBCA 44 at paras 21-24 [***Dentalcorp MBCA***]; ***Northam Distributor Ltd v Roman Hardware Inc***, 2025 BCSC 238 at paras 54-55; ***People Corporation v White Raven Consulting Ltd***, 2025 BCSC 2525 [***White Raven***] at para 96. The rationale for the different rules is that there is no presumed power imbalance in a commercially negotiated agreement, where parties have greater freedom of contract than in employer-employee relationships involving power imbalances: ***Payette*** at paras 35-37.

[21] Third, the strong *prima facie* case standard can apply "when the result of the interlocutory motion will in effect amount to a final determination of the action": ***RJR-MacDonald*** at 338; ***Charkhandeh v College of Dental Surgeons of Alberta***, 2025 ABCA 24 at para 22; ***Dentalcorp MBCA*** at para 24.

[22] Whether or not an interlocutory injunction application will effectively determine the action is a matter for the judge hearing the motion based on all the circumstances: ***Dentalcorp MBCA*** at para 25.

[23] An interlocutory injunction may effectively determine an action where the granting of the injunction will impose such hardship on one party so as to put them out of business or remove any potential benefit of going to trial: ***Questor Technologies Inc v Stagg***, 2020 ABQB 3 at para 16; ***White Raven*** at para 93; ***MTY TIKI MING Enterprises v Boundris***, 2016 ONSC 3290 at paras 26, 30; or when the interlocutory injunction will render issues moot by the time of trial, for example if duration of the rights sought to be enforced will expire or be rendered moot before trial: ***Chatters*** at para 33; ***DaKow Ventures Ltd v Daski Contracting Ltd***, 2018 BCSC 2016 at para 12; ***Daniels Sharpsmart Canada Ltd o/a Daniels Health v Alberta Health Services***, 2024 ABKB 282 at para 18; ***Greco Franchising Inc v Franco Milito et al***, 2021 ONSC 3950 at para 26.

2. Assessment

[24] Jawad incorporated IINC in 2006 and was its chief executive officer. He began negotiating the sale of IINC's assets to Keplar Investment Management Inc (**Keplar**) in 2019.

[25] ILP was created to be the purchaser. Effective April 1, 2020, IINC, ILP, Jawad and others entered into the APA by which, among other things, IINC sold certain defined assets to ILP for consideration of $5,124,500 (before adjustment) plus the assumption of defined liabilities.

[26] Effective the same day, Jawad entered into the Employment Agreement by which Jawad agreed to be employed as chief executive officer of ILP for a three year term ending April 1, 2023. Some key terms of the Employment Agreement included (paraphrased and summarized):

(a) Jawad acknowledged and agreed that he was a fiduciary of ILP (clause 2.2);

(b) Jawad agreed to serve ILP "diligently, faithfully and to the best" of Jawad's ability (clause 5.1), and to use his best efforts to promote the interests of ILP (clause 8.1);

(c) Jawad agreed to devote all his time, attention and effort to the business and affairs of ILP (clause 8.1);

(d) Jawad agreed that he held a "position of trust" with ILP (clause 6.1);

(e) Jawad agreed that it was a condition of his employment that he maintain the confidentiality of all confidential or proprietary information respecting ILP's business and affairs (clause 6.1); and

(f) Jawad acknowledged and agreed that ILP shall own certain rights, title, and interests, including all intellectual property rights, in and to all ideas, works of authorship, creations, or certain other developments (as defined), during the term of his employment (clause 7.1).

[27] In argument, Jawad acknowledged that he was a fiduciary of ILP.

[28] The Employment Agreement included an "entire agreement" clause that provided:

> This Agreement, the [APA] and the policies and procedures of [ILP] in force and as amended, contain the entire Agreement between [ILP] and [Jawad] and supersede and replace any and all previous representations, negotiations, understandings and agreements, whether verbal or written, express or implied, with respect to the terms and conditions of employment and any previous engagement between [ILP] and [Jawad].

[29] The APA included several restrictive covenants, including the Restrictive Covenants.

[30] The Restrictive Covenants apply for a period of time defined as the "**Restricted Period**". The Restricted Period commenced on the APA's defined closing date and ended "on the date that is five years following the termination of the [Employment Agreement]".

[31] The Defendants acknowledge that the Restrictive Covenants are in the context of the APA. After considering the wording of the APA, the Employment Agreement, and the commercial context, I find that the purpose of the Restrictive Covenants (as expressly stated in clause 5.4(d) of the APA) was "to preserve and protect the goodwill inherent in the Business" being acquired by ILP. The Restrictive Covenants were inextricably linked to the APA. Clause 5.4(d) of the APA provides (emphasis added):

> **Each of Seller Parties specifically acknowledges and agrees** that Buyer, in agreeing to acquire the Assets, has relied on the agreements and covenants of Seller

> Parties contained in this Section 5.4, **that this Section 5.4 is an integral part of the Transactions, and that, but for the obligations of Seller Parties in this Section 5.4, Buyer would not be willing to acquire the Assets, including the goodwill inherent in the Business**, for the Purchase Price. Having regard to all of the Transactions and the existing and potential markets for the Business and the importance to the Business of its customers, employees and confidential information, **Seller Parties acknowledge and agree that the terms of this Section 5.4 are reasonable and necessary for the protection of Buyer and the goodwill in the Business** acquired by Buyer.

[32] These were sophisticated parties with no bargaining power imbalance. In these circumstances, the serious issue to be tried standard would normally apply to the enforcement of the Restrictive Covenants.

[33] As noted above, in addition to its claim that the Defendants are in breach of the Restrictive Covenants, ILP's Application also relies on Jawad's alleged breach of fiduciary duty and employee obligations under the Employment Agreement, after the closing of the APA. In my view, given the 3-year term of the Employment Agreement, Jawad's employment by ILP was not merely about the orderly transition or protection of the goodwill of the IINC "Assets" purchased by ILP related to IINC's "Business" at the time of the APA, but was focussed on the future business of ILP using the Assets and Business as they existed, or as may be developed. Thus, the focus of the Employment Agreement was on Jawad's post-APA obligations. Accordingly, ILP's injunctive relief seeking to enjoin Jawad from breaching his post-APA, employment-derived fiduciary obligations and duty of confidence is in the nature of a restraint of trade and gives rise to the strong *prima facie* case standard.

[34] I have also considered whether the determination of the Application will effectively end the action.

[35] This is not a case where the issues would necessarily be moot by the time of trial. Jawad's employment with ILP ended on July 31, 2024 or August 31, 2024[6]. If the Restrictive Covenants are enforceable, the Restricted Period will end in July or August 2029. Unlike other cases where the restriction period would clearly be over by the time a trial could be heard, it is quite possible for motivated and efficient parties to bring a matter to trial in Alberta expeditiously. Active steps have been taken to facilitate moving civil matters to trial faster. For example:

(a) through Notices to the Profession and Public (**NPP**) #2023-02[7], and amendments to the *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*), which became effective January 1, 2024, streamlined trials are now available and encouraged: Rules Part 8, Division 5, rules 8.25 to 8.31;

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[6] There appears to be a possible discrepancy as to when Jawad's employment with ILP ended. Jawad deposes his last day was July 31, 2024, but there is other evidence that he was paid until end of August 31, 2024. I do not need to resolve this possible discrepancy to determine the Application.

[7] https://www.albertacourts.ca/kb/resources/notices-to-the-profession-public/docs/default-source/qb/npp/Notice-to-the-Profession-and-Public-Streamlined-Trial-Process---Civil-(Non-Family)-Actions

(b) in NPP #2024-02, Setting Civil Trial Dates by Order – Pilot Project[8], parties can now apply to schedule civil trials much sooner in the litigation process through "Civil Appearance Court", and then can use litigation plans to work toward the scheduled trial dates; and

(c) in NPP #2025-02[9], Mandatory Litigation Plans in Civil (Non-Family) Cases, the Court has imposed a mandatory litigation plan requirement with the expectation and goal of reducing the length of time civil cases take to get to trial.

[36] In Calgary, current lead times are May 2027 for five-day civil trials and October 2027 for 10-day civil trials. In my view, the trial of this action could reasonably be completed by early 2028, if not sooner. If that were to happen, a trial decision in the Defendants' favour could have material remaining go-forward value.

[37] Although it is *possible* to get this action to trial before the enforcement of the Restrictive Covenants becomes moot, I agree with the Defendants that the proposed injunction will likely end this action from a practical perspective. ILP seeks an injunction restricting competition and the "creation or licensing" in the restricted territories of any software directly competitive with ILP's Dossier software. ILP's position is that this includes the development and licensing of the DAI App as well as DAI's now-completed and ready chat application product (**Clario**). There is no evidence that DAI currently has any other business beyond the DAI App and Clario. There is no evidence that DAI has any revenue and Jawad deposed that DAI would likely lay off its two employees if an injunction is granted.

[38] It seems unlikely that the Defendants, assuming they have the resources available, would invest the significant resources necessary to engage in multiple years of litigation which may or may not result in success, while a competitor (or perhaps ILP) could develop a similar product and get a foothold in the AI-enhanced K-12 education sector software market in the meantime. It is more likely that DAI would invest its resources into other pursuits.

[39] In all the circumstances, I find that the strong *prima facie* case standard applies.

B. Has ILP Established a Strong *Prima Facie* Case of Breach of Contractual and/or Common Law Fiduciary Duty?

1. Fiduciary Employee Legal Framework

[40] I recently summarized the principles of determining whether an employee is a "fiduciary employee" in ***Cantak Corporation v Haderer***, 2026 ABKB 93 at paras 128-135. I incorporate those principles.

[41] If an employee is a fiduciary employee, then they are bound by fiduciary obligations, which include, generally speaking: "to act in the best interests of the person on whose behalf [it] is acting, to avoid all conflicts of interest, and to strictly account for all property held or administered on

[8] https://www.albertacourts.ca/docs/default-source/qb/npp/npp-2024-setting-trials-by-order-2024-04-23-final.pdf?sfvrsn=6e082282_9
[9] https://www.albertacourts.ca/kb/resources/notices-to-the-profession-public/docs/default-source/qb/npp/notice-to-the-profession-and-public-mandatory-litigation-plans

behalf of that person": ***Manitoba Métis Federation v Canada (Attorney General)***, 2013 SCC 14 at para 47, citing ***Lac Minerals Ltd v International Corona Resources***, 1989 CanLII 34 (SCC), [1989] 2 SCR 574 at 646–47; ***Cantak*** at para 137; ***Boaden Catering Limited v Earl Haig Community Day Care***, 2024 ONSC 5349 at para 115; ***Orpheus Medica v Deep Biologics Inc***, 2020 ONSC 4974 at para 95. A fiduciary may not place himself in a position of conflict of interest with his corporation: ***681210 Alberta Ltd (Okotoks Cinemas) v Hunter***, 2011 ABQB 320 at para 84 [***681210 QB***], aff'd 2012 ABCA 83 [***681210 CA***]; ***IBM Canada Ltd v Almond***, 2015 ABQB 336 at para 97.

[42] Absent a non-competition agreement or other similar restriction, the fiduciary may use his or her skills and experience to compete with the corporation post-departure, provided this is not done unfairly: ***Garbage King Inc v Voth***, 2025 ABKB 661 at para 24, citing ***Palumbo v Quercia***, 2018 ONSC 5034 at para 61, quoting ***Aquafor v Whyte, Dainty and Calder***, 2010 ONSC 2733 at para 47; ***Humi Holdings Corporation v Millington et al***, 2023 ONSC 7545 at para 62.

[43] In Alberta, a former fiduciary employee may not do any of the following:

(a) use a former employer's proprietary information in a manner that is contrary to the former employer's best interests;

(b) use a former employer's corporate opportunity, unless the former employer has unequivocally decided not to pursue it;

(c) solicit customers of his or her former employer, until a reasonable period of time has elapsed following the end of their employment with the former employer; or

(d) offer employment to employees of his or her former employer, until a reasonable period of time has elapsed following the end of their employment with the former employer.

ServiceMaster of Canada Limited v Meyer, 2019 ABCA 130 at para 138; ***Questor Technology*** at para 58; ***Garbage King*** at para 23; ***Ruel v Rebonne***, 2022 ABQB 271 at para 79 [***Ruel QB***], appealed allowed on other grounds, 2023 ABCA 156 [***Ruel CA***]; ***SHAC Solutions*** at para 73; ***BrettYoung Seeds Limited Partnership v Dyck***, 2013 ABQB 319 at para 98; ***Carlsen v Physique Health Club Ltd (Physique Fitness Store)***, 1996 ABCA 358 at para 4; ***Jetco Heavy Duty Lighting v Fonteyne***, 2018 ABQB 345 at para 90; ***Torcana Valve Services Inc v Anderson***, 2007 ABQB 356 at para 49.

[44] These same cases establish that an injunction is an available remedy for a breach of fiduciary duty. See also ***Southwest Design & Construction Ltd v Janssens***, 2024 ABKB 502; ***Adler Firestopping Ltd v Rea***, 2008 ABQB 95.

[45] With respect to corporate business opportunities:

(a) it is well established that a fiduciary cannot take a maturing business opportunity from an employer either while he or she is an employee or after the employment has ended: ***Chief Marlowe et al v Barlas et al***, 2025 NWTCA 6 at para 43; ***Alberta Computers.com Inc v Thibert***, 2019 ABQB 964 at para 222, citing ***Carlsen*** and

Canadian Aero Service Ltd v O'Malley, 1973 CanLII 23 (SCC), 40 DLR (3d) 371 at 382; ***Metalworks Canada Ltd v Warrack***, 2018 ABQB 443 at para 94. A fiduciary is precluded from obtaining for themselves, either secretly or without the approval of the company "any property or business advantage either belonging to the company or for which it has been negotiating", which were ongoing at the time the employment ended, or which had been learned about during the employment relationship: ***Canadian Aero*** at 381-82; ***Altam Holdings Ltd v Lazette***, 2009 ABQB 458 at para 117; ***Adler Firestopping Ltd*** at para 23; ***Orpheus Medica*** at para 130;

(b) the opportunity must be more than "merely an idea": ***Carlsen*** at para 6. However, a fiduciary may be precluded from taking "potential opportunities", where the fiduciary had discussed the potential opportunity with the beneficiary's stakeholders, knew of the beneficiary's interest in it, and thus took advantage of it in breach of the duty to act in the beneficiary's best interest and to avoid actual conflicts of interest; ***681210 QB*** at paras 116-117; ***681210 CA*** at para 37; ***Slate Ventures Inc v Hurley***, 1997 CanLII 14707 (NLCA) at para 34; ***Blue Line Hockey Acquisition Co, Inc v Orca Bay Hockey Limited Partnership***, 2009 BCCA 34 at para 61; ***Sateri (Shanghai) Management Limited v Vinall***, 2017 BCSC 491 at para 328; ***Strother v 3464920 Canada Inc***, 2007 SCC 24 at paras 69, 70 and 91; ***Matic et al v Waldner et al***, 2016 MBCA 60 at paras 137-138;

(c) the restriction on corporate opportunities applies even if the corporation could not have acted on the opportunity and the fiduciary is not acting in bad faith: ***Chief Marlowe*** at para 43, citing ***Canadian Aero***, ***Louie v Louie***, 2015 BCCA 247 at paras 23-30, Ellis, *Fiduciary Duties in Canada*, looseleaf (Toronto: Carswell, 2009) at 20-63 to 20-69, and ***Canadian Metals Exploration Ltd v Wiese***, 2007 BCCA 318 at para 25; ***Sateri*** at para 326; ***Metalworks*** at para 96, citing ***Envirodrive Inc v 836442 Alberta Ltd***, 2005 ABQB 446 at para 150;

(d) the business opportunity does not have to be confidential: ***First Majestic Silver Corp v Davila***, 2013 BCSC 717 at para 127, aff'd 2014 BCCA 214;

(e) a fiduciary's duties of loyalty, fidelity and candour require it to disclose to the corporation any conflicts of interests or misappropriation respecting corporate opportunities of which they had knowledge: ***Dunsmuir v Royal Group, Inc***, 2018 ONCA 773 at para 14; and

(f) ultimately, determining whether a fiduciary has breached a fiduciary duty by taking a corporate opportunity requires a contextual analysis, with the overall goal of determining whether the opportunity fairly belonged to the corporation in the circumstances: ***Takhar v Phoenix Homes Limited***, 2025 BCCA 152 at para 22; citing ***Matic*** at paras 124, 128, 152-153. Non-exhaustive factors to be considered include: (1) the position or the office held; (2) the nature of the corporate opportunity; (3) its ripeness; (4) its specificity; (5) the fiduciary's relation to it and involvement in its pursuit; (6) the amount of knowledge possessed; (7) the circumstances in which it was obtained; (8) whether it was special, private or public; (9) the factor of time and the continuation of the fiduciary duty where the

breach occurs after termination of the relationship with the company; and (10) the circumstances surrounding the termination of the fiduciary's relationship with the corporation: ***Canadian Aero*** at 391; ***GasTOPS Ltd v Forsyth***, 2009 CanLII 66153 (ONSC) at para 105; ***681210 QB*** at para 87; ***Interhealth Canada Limited v O'Keefe***, 2023 ONCA 368 at para 75; ***Siler (Re)***, 2017 ABQB 534 at para 30.

[46] With respect to the duty to not solicit the corporation's customers:

(a) the fiduciary must not directly solicit his former employer's clients (or have someone do that for them) for a reasonable period of time: ***Anderson, Smyth & Kelly Customs Brokers Ltd v World Wide Customs Brokers Ltd***, 1996 ABCA 169 at para 32; ***Evans v The Sports Corporation***, 2013 ABCA 14 at para 39; ***Carlsen*** at para 4; ***Capital Estate Planning Corporation v Lynch***, 2011 ABCA 224 at para 51. The purpose of the reasonable time period is to allow the company to counteract the competitive threat that the former employee represents: ***Anderson, Smyth*** at para 32; ***ServiceMaster*** at para 141; ***BrettYoung Seeds*** at para 98 (note 12);

(b) prohibited solicitation does not preclude general advertising campaigns: ***Evans*** at para 43. It does not prohibit the reception of business from former clients in the absence of active solicitation: ***Evans*** at paras 41-42; ***MHK Insurance Inc v Wass***, 2021 ABQB 721 at para 8; ***Jetco*** at para 93; and

(c) the duration of a reasonable time is determined on a case by case basis, increasing based on the degree of trust and confidence the employer has and the more vulnerable the employer is: ***Jetco*** at para 94; ***Mondee, Inc v Voyzant Inc***, 2025 ONSC 2226 at para 45; ***Anderson, Smyth*** at para 32. In the absence of specific contractual terms, time-frames appear to generally range from months to one year, although a period of 19 months has also been adopted: ***Jetco*** at paras 94-95; ***ServiceMaster*** at para 142; ***CRC-Evans Canada Ltd v Pettifer***, 1998 ABCA 191 at para 7; ***Alberta Care-A-Child Limited v Payne***, 2005 ABQB 561 at para 95.

2. Fact Findings re: Jawad's Employment with ILP

[47] Jawad concedes that he was a fiduciary employee of ILP. This was a reasonable concession given the terms of his Employment Agreement and his role as ILP's chief executive officer.

[48] As noted above, Jawad incorporated IINC in 2006 and was its chief executive officer. He began negotiating the sale of IINC's assets to Keplar in 2019.

[49] In November 2019, as part of Keplar's due diligence, Burpee asked Jawad to provide information about IINC's Dossier software (among other things). In response, Jawad provided a memo comparing Dossier to other software which included a description of a plan to incorporate AI (emphasis added):

> When it comes to Dossier modules, [IINC] compete with one of PowerSchool software (special Education module). Dossier provide [sic] a range of modules that is not provided by PS. **The goal is to collect as much of relevant education indicators and become a leader in Education Analytics and with future focus**

> **on leveraging AI to predict student success rate and assist educators in providing support to At Risk students**.

[50] On March 26, 2020, mere days before the effective date of the APA and his Employment Agreement with ILP, Jawad incorporated DAI to "pursue opportunities" in AI technology. Jawad's evidence is that he always had the intention to explore the development of AI based software for use in the education sector. In his questioning, he stated: "I created [DAI] for the purpose and intention of creating an AI solution K to 12".[10] On the record before me, I find that Jawad did not inform the "Buyer" under the APA about these intentions at the time of the APA.

[51] Effective April 1, 2020, Jawad entered into the APA and the Employment Agreement; became ILP's chief executive officer; confirmed he was a fiduciary of ILP bound by fiduciary obligations; agreed to serve ILP diligently, faithfully and to the best of his ability; agreed to devote "all of his time, attention and effort" to ILP's business and affairs and to promote its interests; and agreed that he would not put himself in a conflict of interest with his duties and obligations to ILP.

[52] Notwithstanding these undertakings and agreements, in 2022, Jawad began spending some of his time taking steps on behalf of DAI to explore the opportunity of using AI in the education sector. He applied for and obtained a grant from Technology Alberta, which he used to hire two University of Alberta graduate students. He described the work to the graduate student as "leveraging existing education data and indicators to assist in building an AI algorithm to support [a] predictive model and provide insight to educational professional[s] based on the data collected".

[53] Jawad and DAI used ILP's bookkeeper to assist the graduate students in the creation of their invoices to DAI. The invoices prepared by those students, on their face, indicate that their work was to do AI research "for the Dossier system and assisting [in] building [an] AI algorithm within Dossier", although Jawad denies that this was the purpose and asserts that this description was a mistake. Regardless of the true purpose of the work, it appears from one invoice that at least one of the students was likely given access to the Dossier software to do their work. One of the invoices provided:

> In this month I started to work as an AI Engineer at [DAI]. I became familiar with the Dossier software and its different modules which are necessary for my project. I'm also actively reviewing the literature for similar works to have a better understanding of the procedure.

[54] This invoice is admissible as some proof of the truth of its contents under the business records exception to hearsay: ***ATCO Energy Solutions Ltd v Energy Dynamics Ltd***, 2024 ABKB 162 at para 177. The accuracy of this entry was not denied by Jawad.

[55] The work done by the graduate students was not disclosed by Jawad to any other directing mind of ILP or its general partner.

[56] In June 2023, ILP bought out Jawad's remaining equity interest in ILP.

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[10] Jawad Transcript at page 136.

[57] In 2022 and 2024, Jawad and DAI started to build out DAI's marketing materials and website. They used one of ILP's long-standing international contractors, Paul Schepilov (**Schepilov**). Some of the marketing materials Schepilov prepared were first prepared with ILP branding. Jawad deposed that some of them were mistaken but could not remember why some of them were prepared with ILP's branding. In any event, Jawad asked them to be changed to DAI branding. The marketing materials clearly reference the use of AI in the K-12 education sector to inform the practice of school districts, schools and teachers to support student success. Schepilov invoiced, and was paid by, DAI.

[58] Jawad and DAI's creation of a website and these marketing materials was not specifically disclosed to any other directing mind at ILP or its general partner.

[59] ILP was aware of DAI because its logo was on the ILP offices out of which Jawad worked (and which were leased by DAI post-APA), and because some of Jawad's compensation for his work for ILP had been paid to DAI since about 2021. However, while Jawad's evidence is that, at some point, he advised ILP generally that he was working on AI in the education sector, he acknowledges that he never provided anything in writing and he never provided the details of what he was working on. There is no evidence that he sought approval from ILP for the work he was doing for DAI.

[60] In February or March 2024, Jawad attended an internal ILP presentation given by Mike Priest (**Priest**), who was ILP's chief operating officer and Jawad's planned replacement as ILP's chief executive officer. The slide presentation addressed the use of AI, and concluded with a slide that said:

> Coming Soon...
>
> - Think how AI can guide our customers to success
>
> AI Chatbot

[61] In March 2024, DAI and ILP jointly organized and sponsored a conference for the College of Alberta School of Superintendents (**CASS**), which included presentations on AI. Some of the very marketing materials prepared by Schepilov were prominently displayed with DAI branding, as was DAI's website address. This conference was attended by Jawad and Priest. After this conference, Jawad posted on his LinkedIn profile (which reflected that he was the CEO of DAI, not ILP) and described the conference as the "AI in K-12 Education conference". It also disclosed that DAI or Jawad had created a LinkedIn group titled "AI in K-12 Education".

[62] Following the March 2024 CASS conference, principals of Keplar expressed concerns about DAI, which led to conversations between Burpee and Jawad in late April and early May 2024 about Jawad's ILP role, the transition to Priest as the new chief executive officer, the Restrictive Covenants, and Jawad's compensation. During those conversations, Burpee did not know the specifics of what DAI was building, Jawad assured him that it was in no way competitive with ILP, and Jawad confirmed that he had no intention to compete directly with ILP. On May 19, 2024, Jawad confirmed the terms of his transition and reconfirmed his obligations under the Restrictive Covenants in the APA and the key terms of his Employment Agreement.

[63] While these discussions were going on, on May 3, 2024, Jawad made the May 2024 Presentation at an AI seminar co-hosted by Technology Alberta, the Alberta Machine Intelligence Institute (**AMII**) and the University of Alberta.[11] In this presentation, among other things, Jawad showed DAI branded slides, including a slide called "Dashboard Analytics". It showed data inputs that are consistent with at least some of the data inputs that go into the Dossier software. Jawad stated:

> All of this data is going to inform the practice of the educators, be the teacher, even the parents, and also the planner at the school. Now before this, AI was not in the middle for us. And we are trying to put AI in the middle. Meaning, before decision is made about prediction and we could predict without AI, because we have knowledge of the students and so on, but really what we are trying to do is use all the data in the schools to predict challenges and the challenges could be students not coming to school for those reasons. And also recommendations and all recommendations meaning suggestions or strategies for students to succeed. All of this data we are talking about already exists in the school, they are collecting in their SIS (student information system), they are collecting it in different systems, in Excel, in Word, all of this data about students. And at the end of the day is to inform the practice for student support.

[64] At the end of his presentation, Jawad showed a slide with DAI branding, which stated that the next steps were "collaboration and partnership with school districts for implementing AI/[Machine Learning] on their data". When this slide was presented, he stated (emphasis added):

> Now, for us, next steps. So, before I go to the next steps. Looking where we are. We already working; **I have basically machine engineer working on building models**; but one of the things we are trying to do, we are not trying to do it as a company in the corner ourselves. The key is to collaborate with the school districts...

[65] This appears inconsistent with Jawad's other evidence in this Application, including paragraph 33 of his affidavit where he states that no code had been written before his departure from ILP and that DAI's work prior to July 31, 2024 was "limited to considering the nature of the data used in the education space and the potential for AI to provide a useful software solution".

[66] Jawad went on to say that he was planning to apply to AMII for project validation and getting access to another view of "our project". In response to a question posed to him about why K-12, why now? Jawad stated (emphasis added):

> And school districts even right now they have systems; but many of them will use Word and Excel as a way of managing data. Now less and less, right, so, and the **goal of my companies and still it is, is to inform practice and inform decision-making; well AI is basically [indiscernible] ... why now when it comes to AI is really it is a tool ... to make that happen faster and better**.

[11] This is the presentation found at the YouTube link referenced above.

[67] In response to another question, Jawad stated that he expected to have an algorithm ready to be tested in schools within 6 months (that is, by November 2024).

[68] Based on the record before me, I find that Jawad did not disclose the details of DAI's AI project to Burpee in their discussions in April and May 2024 (or any time before he left ILP), including how it intended to put AI in the middle of available school data and decision-makers to inform practice and make decision-making "faster and better"; that Jawad had someone working on building models and would have an algorithm ready to be tested within 6 months; or that he already had plans to have his project validated by AMII.

[69] On July or August 31, 2024, Jawad's employment with ILP ended.

3. Fact Findings re: Post ILP Employment and Direct Competition

[70] On March 19, 2025, ILP became aware that DAI was marketing a software product at a CASS conference. ILP took photographs of DAI's vendor stall at the conference which provided more information about what DAI was working on. ILP commenced this action on April 17, 2025.

[71] DAI has hired two employees other than Jawad. DAI has completed one software product, Clario, its chat-based application "dealing with documentation and manuals in the school".[12] DAI and its employees are actively working on the DAI App and it is set to launch at the end of May 2026.

[72] ILP asserts that the DAI App will directly compete with ILP's Dossier software. The Defendants disagree. I address this issue below.

[73] Competition has been defined as "the act or process of competing, such as the effort of two or more parties acting independently to secure the business of a third party by offering the most favourable terms" or "to contend with another in rivalry, for the same object or thing for which that other is striving": ***Chatters*** at para 75; ***Woodward v Stelco Inc***, 1996 CanLII 8180 (ON SC) at para 64.

[74] The Defendants do not seriously argue that the DAI App will not have the same potential customers as the Dossier software. It is fairly acknowledged that the DAI App, when completed, will also be marketed to the K-12 education sector.

[75] However, the Defendants argue that the DAI App will not directly compete with the Dossier software because it is not intended or expected to, and will not, fulfil any of the data management and related functions of the Dossier software. They rely on ***Humi Holdings Corporation v Millington et al***, 2023 ONSC 7545, in which the Court held that, while the two software products at issue both included payroll infrastructure, they were not substantially similar and were not in direct competition. In my view, ***Humi*** is distinguishable, including because the software product was to be sold to different customers, involved a different marketplace, and the corporation did not have any plans to develop a similar product during the employee's tenure with the corporation.

[12] Jawad Transcript at page 8.

[76] The Dossier software is described by Jawad as primarily a data management system used by school districts to input, manage and display the details of various types of data, including data imported from the school's information system (**SIS**) (such as human resources information, student attendance and academic results data) as well as data inputted directly into Dossier by school staff (such as notes, observations and staff recommendations). Dossier makes this data available to its users, including teachers and administrators, who can review, search, sort and provide visual representations based on the data. Dossier's marketing materials describe Dossier as a "powerful education management system that provides insight into student performance to help inform strategies to better meet unique needs of each student" and as a tool to "leverage analytics that allow educators to efficiently identify students who need intervention".[13]

[77] The Dossier software has several modules. For example, its "Educational Analytics" module brings together student data from numerous sources, allowing the users to view, sort and analyze key data such as student enrollment, attendance and academic results. Its marketing materials state that it enhances decision-making through the use of multiple dashboards. As another example, its "Attendance Analytics" module allows the user to sort, view and analyze aggregated attendance data imported from the SIS in various presentations. Jawad acknowledged that Dossier analyzes the information and presents it in a manner that is easier to comprehend, digest, consider and make decisions upon.[14]

[78] However, as described by Jawad, Dossier does not, in any of its modules, author or generate substantive guidance, recommendations or predictions. It presents and manages the data, allowing its users to view, analyze and assess the data – and to draw their own conclusions from it.

[79] The DAI App is also intended to be marketed to the K-12 education sector. It is anticipated to operate a collection of AI models (including large language models), which will access the school's SIS system and any other data management system the school district has that can share data, to provide substantive recommendations and predictions through a chat-based user interface. The DAI App compiles, analyzes and presents data to a user that either recommends an action or helps a user make a decision.[15] The recommendations and responses will be based on the customer's raw student data and on approved pedagogical guidance research and policy documents. The categories of input data for the DAI App are essentially the same as those used by Dossier,[16] however, the DAI App will not have an interface to allow the user to input or upload data and will not function as a data management system.

[80] There are some obvious differences between Dossier and the anticipated DAI App, including available features and some functionality. However, they largely draw from the same raw data, and both seek to insert themselves in the middle between the available data and the decision-makers to assist user decision-making. Jawad acknowledged that the main functional difference between the products is that the DAI App provides a prediction or recommendation to

[13] April 10, 2025 Burpee Affidavit at para 22.
[14] Jawad Transcript at pages 24-25.
[15] Jawad Transcript at pages 16-17.
[16] Jawad Transcript at pages 61-63.

K-12 decision-makers based on AI.[17] Essentially, the use of AI in this context is a tool to make informed decision-making happen "faster and better"[18] or with a "more powerful" product.[19]

[81] Jawad acknowledged that Dossier is a "data-informed decision-making tool that supports student learning", and in his LinkedIn profile, he describes his and DAI's focus in much the same way: "leveraging AI as a data-informed decision-making tool to support student learning".[20] This highlights that the products serve the same function, but the DAI App uses AI and Dossier does not.

[82] Based on the record before me, I find that the DAI App could, in some circumstances, be complementary to Dossier where Dossier is already being used by a school district, because the DAI App could use the additional user-inputted data created through the use of Dossier as a data input. Therefore, it is entirely possible that such school districts will use both software products and there will be no competition. This seems to be a key point of the Defendants.

[83] However, the Defendants ignore another obvious possibility, namely that existing Dossier customers may seek to eliminate their use of certain Dossier modules (for example, such as Educational Analytics or Attendance Analytics) which may be rendered redundant, or the function of which can be better served by the DAI App. Neither party provided me with sufficient information about how ILP's licencing works to determine whether or when it might be possible for existing customers to abandon Dossier or to restrict Dossier's licencing to certain modules and not others. I am not able, as suggested by ILP, to simply infer that existing customers would or could cease using Dossier, without better evidence. To do so would be impermissible speculation: ***Chatters*** at para 90.

[84] But that does not end the analysis. In my view, the Defendants fail to acknowledge another key area where, based on the record before me, I find that the DAI App will directly compete with Dossier: for school districts that do not yet use Dossier or a similar software program. In his May 2024 Presentation, Jawad noted that many school districts use Microsoft Word and Excel to manage their data. These school districts were clearly presented as a target that Jawad had identified. It is those school districts, when considering a tool to better leverage their data to improve decision-making, that will have to decide between various options, which will include Dossier (with its additional functionality not available in the DAI App), the DAI App, or other competitors, or possibly some combination of products. This range of possible options available to potential customers to perform the same function through different products is, in my view, the epitome of direct competition. For those potential customers, it is not speculation to say that ILP and DAI will be "fighting for the same dollars" and will be directly competing. It is based on the evidence of Jawad's statements and conduct.

[85] I find that there is a strong *prima facie* case that the DAI App will be directly competitive with Dossier.

[17] Jawad Transcript at page 18.
[18] May 2024 Presentation (noted above).
[19] Jawad Transcript at pages 152-153.
[20] Jawad Transcript at pages 157-158.

4. Assessment of Breach of Fiduciary Claim

[86] ILP asserts that Jawad breached his contractual and common law duties, including fiduciary duties, by being unfaithful and disloyal to ILP; placing himself in a conflict; removing, retaining, using and disclosing ILP's confidential and proprietary information for his own personal gain; gaining an unfair competitive advantage for himself against ILP; and surreptitiously developing competing software.

[87] I find that ILP has shown a strong *prima facie* case of a breach of fiduciary duty against Jawad.

[88] Prior to the APA, Jawad represented to the Buyer that, at that time, his future focus for the Dossier software included leveraging AI to predict student success and assist educators in providing support in the K-12 education sector. While that representation may not have formed part of the APA, it informs the existence of a potential corporate opportunity for the new corporation, ILP, that was obviously known to Jawad.

[89] Post APA, while he was ILP's fiduciary, Jawad took steps to implement that future focus. However, he did not do that for his beneficiary ILP through making an AI-enhancement of or to Dossier, but instead for his own benefit. He obtained grants and hired graduate students to study the issue, including by apparently giving them access to Dossier. He built DAI marketing materials and a website. In his efforts for DAI, he used some of ILP's resources, including employees and contractors.

[90] Jawad never provided anyone at Keplar, or any directing mind of ILP or its general partner, the details of what he was doing. He never disclosed his conflict of interest in the work he was doing to personally pursue development of software to leverage AI to assist K-12 educators in their student-related decision-making.

[91] Further, by at least February or March 2024, Jawad knew that ILP was (apparently independently through Priest) pursuing a similar future focus of using AI in the K-12 education sector. Jawad still did not disclose the details of what he was doing and pressed on with his work for DAI, representing himself in the market as the chief executive officer of DAI and presenting that his K-12 AI project was well advanced. When a concern was raised by ILP, he assured ILP that what he was doing was not competitive, and confirmed his obligations, but still did not disclose the details or his conflict of interest.

[92] The Defendants argue that the "mere idea of AI in connection with education software" is in no way a corporate opportunity. They rely on ***681210 QB*** and ***681210 CA***. However, that case does not assist the Defendants in the way they suggest. In ***681210 QB***, a fiduciary employee of a corporation that operated a movie theatre business in Okotoks had explained his vision of expanding the business model in other markets through the corporation. The Court held that there had to be more than a simple discussion of future concepts, ideas or dreams regarding corporate direction, but still found a breach of fiduciary duty. Based in part on the fiduciary's expressed vision for the corporation, the Court held, at paras 112-118, that it was not fatal that the corporate opportunity was not ripe or mature. The Court held the fiduciary had breached his fiduciary duties and that the fiduciary was not allowed to claim the opportunity for himself: ***681210 QB*** at para 145.

[93] In this case, if the opportunity to use AI to improve data analytics in the K-12 education sector was not a ripe opportunity for ILP, or was not being zealously pursued by ILP, it was largely because Jawad chose not to advance it on behalf of ILP, but instead for DAI's benefit.

[94] I have considered the factors from ***Canadian Aero*** summarized above. Jawad held the highest office in ILP. The corporate opportunity had been identified by 2019 and was not pursued for ILP during his time, but was approaching ripeness by the time he left ILP. Jawad held extensive knowledge both before the APA and learned more during his time with ILP. The idea of using AI was not private, but was a special adaptation to a unique niche market. Jawad never disclosed the details of what he was doing during his tenure with ILP, or in the context of negotiating the terms of his transition from ILP.

[95] I find, on the record before me, that ILP has established a strong *prima facie* case that Jawad breached his contractual and common law fiduciary duties by failing to advance the best interests of ILP; failing to devote his time to ILP's business and affairs; breaching his duty of candour and full disclosure; breaching his duty of loyalty; breaching his duty to avoid conflicts of interest; and diverting the corporate opportunity of developing an AI-enhanced K-12 software product to enhance educational decision-making. I further find that, based on the foregoing, there is also a strong *prima facie* case that Jawad and DAI are (or will be upon the launch of the DAI App) unfairly competing with ILP based on those breaches.

[96] On the other hand, I find that ILP has not established a strong *prima facie* case that Jawad or DAI have breached a stand-alone common law fiduciary duty not to solicit ILP's customers. Jawad's attendance and participation at conferences is insufficient. There is some evidence that he has had direct dealings with a few ILP customers, but the evidence does not establish whether those were the result of Jawad's solicitation or some other way. Further, at the time the Application was filed, it had been 7-8 months since Jawad had left ILP, and it has now been more than 20 months. Any reasonable non-solicitation period at common law has likely expired. I address the Non-Solicitation Clause separately later in these Reasons.

C. Has ILP Established a Strong *Prima Facie* Case of Contractual or Common Law Breach of Confidence?

[97] Clause 6.1 of Jawad's Employment Agreement provides that Jawad was to maintain, in the strictest confidence, ILP's "Confidential Information", which included "all confidential or proprietary information respecting the business and affairs of [ILP], its subsidiaries, affiliates, its business partners, suppliers and customers, including any Developments (as defined below)".

[98] Clause 7.1 of the Employment Agreement defines Developments as including:

> ... developments that (i) result or derive from the Executive's employment by [ILP] or from the Executive's knowledge or use of Confidential Information; (ii) are developed, authored, conceived, written, created, reduced to practice, or made by her [sic] (sole or jointly with others) in the course of the Executive's employment; (iii) result from or derive from the use or application of the resources of the Partnership; or (iv) relate to the business operations of the Partnership.

[99] At common law, as noted above, a fiduciary cannot use a former employer's proprietary or confidential information in a manner that is contrary to the former employer's best interests: ***Questor Technologies*** at para 30. A breach of confidence requires: (i) that the information conveyed was confidential; (ii) that it was communicated in confidence; and (iii) that it was misused by the party to whom it was communicated: ***Lac Minerals Ltd*** at 576; ***Composite Technologies Inc v Shawcor Ltd***, 2017 ABCA 160 at footnote 92; ***Seyedi v Nexen Inc***, 2016 ABCA 24 at para 13; ***Questor Technologies*** at para 31.

[100] On the record before me, I do not find a strong *prima facie* case that DAI's development of the DAI App or Clario are "Developments", and are therefore the Confidential Information of ILP under the Employment Agreement.[21] However, ILP would meet the lower serious issue to be tried standard, given the apparent use of Dossier and other ILP resources in the graduate research, and given Jawad's conception and development of this work while he was employed by ILP and obligated to devote his time to ILP's business.

[101] I further do not find, on the record before me, that there is a strong *prima facie* case of the misuse of confidential information at common law, given the limited information I have about the terms of access under which the graduate students were given access to Dossier to complete their education sector AI research for DAI. Again, this would only be sufficient to meet the serious issue to be tried standard at this stage.

[102] Further, while this case raises interesting questions about whether Jawad's future focus and concept of developing AI in the K-12 education sector was part of the "intangible rights and property" of IINC acquired by ILP under the APA or was otherwise confidential, these matters would also only meet the serious issue to be tried standard on the record before me.

D. Has ILP Established a Strong *Prima Facie* Case to Enforce the Non-Compete Clause?

[103] In ***Chatters*** at paras 38-44, I summarized several interrelated matters that courts consider in determining the merits of an application to enforce a restrictive covenant by injunction:

(a) Is the restrictive covenant unambiguous?

(b) Is the restrictive covenant being breached or will it be breached?

(c) Does the plaintiff have a legitimate or proprietary interest that is entitled to the protection of the restrictive covenant?

(d) Even if unambiguous, is the restrictive covenant reasonable and enforceable?

[104] I address these questions below.

[21] In argument, ILP confirmed that it was not relying, at this time, on the DAI App as being ILP's property as a separate ground to support an injunction.

1. Is the Non-Compete Clause Unambiguous?

[105] As per ***Chatters*** at para 39:

> [39] First, the Court will consider whether the non-compete clause is unambiguous. The onus is on the party seeking to enforce a restrictive covenant to show the reasonableness of its terms, which cannot be determined without first establishing the meaning of the covenant: [***Shafron***] at para 27. An ambiguous restrictive covenant, in the sense that what is prohibited is not clear as to activity, time, or geography, will be *prima facie* unenforceable because the party seeking enforcement will be unable to demonstrate reasonableness: ***Shafron*** at paras 27, 43; ***M & P Drug Mart Inc v Norton***, 2022 ONCA 398 [...] at para 35; ***Chhina v Rebecca L Darnell Law Corporation***, 2021 BCCA 430 at para 25; ***961945 Alberta Ltd (Servicemaster of Edmonton Disaster Restoration) v Meyer***, 2018 ABQB 564 at para 36, aff'd 2019 ABCA 130; ***Specialized Property Evaluation Control Services Ltd v Les Evaluations Marc Bourret Appraisals Inc***, 2016 ABQB 85 at para 18.

[106] If it is impossible to predict when a restrictive covenant is being breached, or if its meaning cannot be ascertained, it should not be enforced: ***Globex Foreign Exchange Corporation v Kelcher***, 2011 ABCA 240 at paras 19–20.

[107] Whether a restrictive covenant is unambiguous is a matter of contractual interpretation. I incorporate the principles of contractual interpretation applied to restrictive covenants summarized in ***Chatters*** at paras 54-61.

[108] The Defendants do not argue that the Non-Compete Clause is ambiguous. This is for good reason. I find there is a strong *prima facie* case that the Non-Compete Clause is clear with respect to its scope of activities, duration and geographical scope.

[109] The Non-Compete Clause's core restriction is in respect of "the creation or licensing of education software products (for educational institutions (K-12)) that directly compete with any software products of the Seller". "Seller" is defined as IINC.

[110] Reasonably interpreted in its context (on the record before me), the Non-Compete Clause was objectively intended to prohibit Jawad from being materially involved in a business (in the specific geographic regions and for the Restricted Period) that secures, or is intended to secure, software licensing sales to K-12 educational institutions that would or could otherwise be served by ILP through IINC's software products as purchased under the APA. The restriction relates to IINC's software products as they existed or were under development at the time of the APA, based on the reference to "software products of the Seller" rather than a reference to software that would or could be developed in the future by ILP post-APA closing. This clause was clearly intended to protect competition with the software product assets sold under the APA.

[111] There is a strong *prima facie* case that the Non-Compete clause is unambiguous.

2. Are the Defendants Engaging in Conduct Prohibited by the Non-Compete Clause?

[112] Based on the same reasoning as discussed above, I find that there is a strong *prima facie* case that Jawad has breached the Non-Compete Clause through the creation of the DAI App in Alberta, because it will be directly competitive with Dossier once launched. I discuss Clario further at the end of these Reasons.

3. Does ILP Have a Legitimate or Proprietary Interest Entitled to Protection?

[113] If a party does not have a legitimate or proprietary interest worthy of protection at the time the restrictive covenant is enforced, the restrictive covenant may be unenforceable: ***Chatters*** at paras 41-43 and 93; ***MEDIchair LP v DME Medequip Inc***, 2016 ONCA 168 at paras 37–41; ***Payette*** at para 61; ***Elsley*** at 925. A desire to solely eliminate or control competition is not alone a valid interest: ***Chatters*** at para 42 (and cases cited therein).

[114] In order for a proprietary or legitimate interest to warrant protection of the restrictive covenant, it should be connected to the purpose of the restrictive covenant. Determining the purpose or object of the restrictive covenant is critical: ***Chatters*** at para 96, citing ***MEDIchair*** at paras 39–40.

[115] It was not argued before me that ILP did not have a legitimate or proprietary interest.

[116] I find that there is a strong *prima facie* case that the Non-Compete Clause seeks to protect a legitimate, proprietary interest, including the goodwill, trade connections and customer relationships (including related to ILP's Dossier product).

4. Even if Unambiguous, is the Non-Compete Clause Reasonable and Enforceable?

[117] As summarized in ***Chatters*** at para 44:

> [...] Restrictive covenants that are unreasonably broad, with reference to the public interest, will not be enforced: ***City Wide Towing*** at para 31, citing ***Elsley*** at 923–924. A non-competition covenant will be reasonable provided it is limited as to the applicable scope of activities, duration, and geography as are necessary for the protection of the legitimate interests of the party in whose favour it was granted: ***City Wide Towing*** at para 33; ***Payette*** at paras 61–62; ***Shafron*** at para 17; ***Adderley v 1400467 Alberta Ltd***, 2012 ABCA 216 at para 6. This assessment involves consideration of a number of factors, including the clear identification of the reason why the covenant was entered into, and its purpose, based on contractual interpretation principles (including the wording of the agreement and its surrounding circumstances): ***Payette*** at paras 45, 61–62; ***Demand Science Group, LLC v Gladish***, 2024 ONSC 214 at para 16; [***People Corporation #1***] at para 14.

[118] To be reasonable and enforceable, a non-competition covenant must, having regard to the purpose of the restrictive covenant, be limited as to the applicable scope of activities, duration, and

geography as are necessary for the protection of the legitimate interests of the party in whose favour it was granted: ***Chatters*** at para 105, citing ***City Wide Towing*** at para 33; ***Payette*** at paras 45, 61; ***Shafron*** at paras 17, 26-27 and 43; ***Adderley*** at para 6; ***Demand Science*** at para 16; ***People Corporation* #1** at para 14.

[61] The reasonableness of the geographic scope of a restrictive covenant is judged by the geographical scope of the business that was sold: ***Ruel QB*** at paras 61, 63; ***Chatters*** at para 111, citing ***City Wide Towing*** at paras 34-35; ***Payette*** at paras 65-67.

[119] If a restrictive covenant is found to be part of a commercial agreement akin to the sale of a business, the covenant will be presumed to be lawful unless it can be shown on a balance of probabilities that its scope is unreasonable: ***Chatters*** at para 49; ***Payette*** at para 58; ***Dentalcorp MBCA*** at para 32; ***Ruel CA*** at para 10.

[120] In the APA, Jawad agreed that the Non-Compete Clause was reasonable (clause 5.4(d)), which is not determinative but is a factor in favour of enforceability: ***Payette*** at para 60; ***White Raven*** at para 63; ***Kerzner v American Iron & Metal Company Inc***, 2017 ONSC 4352 at para 99.

[121] With respect to the scope of activities covered by the Non-Compete Clause, the Defendants argue that, if it captures the development of software, it is unreasonably broad. I disagree. The Non-Compete Clause does cover the "creation" of software (which, in my view, is part of development), but it is reasonably limited to the creation of software that is directly competitive with the software purchased by ILP from IINC in a specific niche market (education software products for K-12 education institutions). There is a strong *prima facie* case that this is reasonable and enforceable.

[122] With respect to the geographical scope, the Defendants acknowledged that they have not raised this as an issue, but then argued that the evidence on the Application does not support the geographical reach of the Non-Compete Clause. This was not very strongly pursued. The main battleground of concern appears to be Alberta.

[123] I agree that there is limited evidence of ILP doing business outside of Alberta. Burpee states that ILP does business in Alberta and elsewhere in Canada and he was not questioned on this point. ILP's brief states that Dossier was licensed or being developed for licensing in certain geographical regions covered by the Non-Compete Clause at the time of the APA. It also asserts that the restricted territories "consist of the provincial jurisdictions where [ILP] does business". However, briefs are not evidence: ***ASB (Re)***, 2025 ABKB 614 at para 18 (and cases cited therein).

[124] On the other hand, Jawad is aware of where ILP did business and also did not provide evidence about this issue. In this circumstance, the presumption of reasonability of the geographical scope of the Non-Compete Clause, as noted above, applies.

[125] Further, and in any event, even if this is wrong, there is a strong *prima facie* case that the Non-Compete Clause would be saved as reasonable because its scope could be reduced through the use of "blue pencil" severance by deleting the geographical jurisdictions other than Alberta: ***Chatters*** at para 113; ***People Corporation #1*** at paras 61-63; ***Globex Foreign Exchange Corporation v Kelcher***, 2005 ABCA 419 at para 49; ***City Wide Towing*** at paras 39-52. This type of severance is expressly contemplated in clause 5.4(d) of the APA. If necessary, I would have

found that there remained a strong *prima facie* case of reasonableness and enforceability of the Non-Compete Clause after severance and based on a more limited geographical scope.

[126] With respect to the Restricted Period, the Defendants do not assert that 5 years after employment termination is unreasonable in this case. It is consistent with time periods in other similar cases: ***Payette***, ***Karavos***, ***Ruel***. In these circumstances, I find that there is a strong *prima facie* case that the temporal scope of the Non-Compete Clause is reasonable.

[127] I find that there is a strong *prima facie* case that the Non-Compete Clause is reasonable and enforceable.

5. Conclusion re: Non-Compete Clause Enforcement

[128] On the record before me, I find that ILP has established a strong *prima facie* case that the Defendants have breached, and will further breach, the Non-Compete Clause and that it is enforceable.

E. Has IPL Established a Strong *Prima Facie* Case to Enforce the Non-Solicitation Clause?

[129] In order for a non-solicitation restrictive covenant to be unambiguous and enforceable, its meaning must be ascertainable and it must be possible to predict when it is being breached: ***Evans*** at paras 27-28; ***Globex*** at paras 19-20; ***People Corporation v Mansbridge***, 2021 MBQB 170 at para 30 [***People Corporation MBQB***], aff'd 2022 MBCA 37; ***Mason v Chem-Trend Limited Partnership***, 2011 ONCA 344 at paras 27-30; ***Camino Modular Systems Inc v Kranidis***, 2019 ONSC 7437 at para 37; ***Occidental Petroleum Corporation v Boguslawski***, 2025 ABKB 578 at para 21; ***Chatters*** at para 52. The covenant must narrow the restriction to a "reasonably knowable group of people": ***People Corporation #1*** at para 66; ***People Corporation v 2578649 Alberta Ltd. (Quinn Advisory Group)***, 2024 ABKB 711 at para 61.

[130] The Non-Solicitation Clause provides that, for the Restricted Period, Jawad would not do several things, namely:

> (i) solicit the business of any Person who is a customer of Buyer for services materially similar to those offered by Buyer;
>
> (ii) cause, induce or attempt to cause or induce any customer, supplier, licensee, licensor, employee, contractor, referral source, or other business relation of Buyer to cease doing business with Buyer or to purchase products or services materially similar to those offered by Buyer;
>
> (iii) interfere with the business relationship Buyer has with any of its customers, suppliers, licensees, licensors, employees, contractors, referral sources, or other business relations of Buyer;
>
> (iv) solicit any employee or independent contractor of Buyer or in any way interfere with the relationship between Buyer and any of its employees or independent contractors; or

> (v) solicit any employee or contractor of Buyer for the purpose of having such employee or contractor employed or in any other way engaged by another Person with whom a Seller Party may be affiliated or otherwise associated;
>
> provided, however, that [Jawad] may engage in such acts with the prior written approval of Buyer or pursuant to the terms of the [Employment Agreement] on behalf of Buyer and its Affiliates.

[131] The Defendants raise several concerns about the ambiguous and overly broad nature of these restrictions. There may be other problems with the clause that I have not addressed below because, as will be seen, there is no need to do so.

[132] First, the Defendants argue that the clause references the "Buyer", which is defined as ILP acting through its general partner Keplar, when Keplar is no longer ILP's general partner. In my view, this is not fatal to the Non-Compete Clause as it was clearly intended to relate to the business of ILP acting through its general partner, not other businesses of ILP's general partner (if any).

[133] Second, the restriction purports to apply to customers (and other persons with connections to ILP), using the present tense without in any way limiting them to those with which ILP had a connection during Jawad's employment. In my view, this is fatal to the Non-Solicitation Clause in its entirety, as Jawad could never know whether a particular person became a customer, supplier, licensee, licensor, employee, contractor, or referral source after his employment ended. This creates an ambiguity and, further, an unreasonable overreach where there is not a "reasonably knowable group of people": ***People Corporation #1*** at para 66; ***People Corporation MBQB*** at para 31; ***dB Noise Reduction Inc v Letkemann et al***, 2022 MBKB 208 at para 59; ***Camino Modular Systems*** at para 38.

[134] In my view, this flaw runs through the Non-Solicitation Clause and is not something that can likely be saved through a blue-pencil or notional severance, despite clause 5.4(d) of the APA: ***Chatters*** at para 113; ***Shafron*** at paras 2, 29–42; ***City Wide Towing*** at paras 39–52; ***People Corporation #1*** at paras 61–63.

[135] Third, sub-clauses (ii) and (iii) prohibit solicitation of ILP's "business relations", which is an additional ambiguity in this context because it is unclear what this would cover: ***Camino Modular Systems*** at para 38.

[136] I find that ILP has not established a strong *prima facie* case to enforce the Non-Solicitation Clause.

F. Has ILP Established Irreparable Harm?

[137] As summarized in ***Chatters*** at para 116:

> [116] Irreparable harm 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): ***RJR-MacDonald*** at 341; ***Stogryn v McGovern***, 2020 ABCA 38 at para 27; ***Pendosi Holdings Ltd v The Forzani Group Ltd***, 2011 ABCA 171 at para 22,

> citing ***Dreco Energy Services Ltd v Wenzel***, 2004 ABCA 95 at para 15. It can include circumstances where one party will suffer permanent market loss or irrevocable damage to its business reputation: ***RJR-MacDonald*** at 341. [...]

[138] The Defendants argue that ILP must meet the more stringent requirements of a *quia timet* injunction, because the DAI App has not yet been launched. A *quia timet* injunction requires a "high probability that the harm will occur and an element of 'imminent and real' threat": ***Irving Oil Limited v Ashar***, 2016 ABCA 15 at para 19, citing ***Lubicon Lake Indian Band v Norcen Energy Resources Ltd***, 1985 ABCA 12 at para 22; ***WV v MV***, 2024 ABKB 174 at para 145; ***EAD Property Holdings (103) Corp v Greyhound Canada Transportation ULC***, 2015 ABQB 239 at para 31.

[139] The Defendants argue that ILP has failed to establish irreparable harm, or a high probability and imminent or real threat that it will occur. It points to Burpee's affidavit, which asserts that the Defendants' conduct has the "potential" to cause permanent irreparable harm to ILP, through loss of reputation, loss of clients, loss of goodwill, and loss of its confidential and proprietary information.

[140] Such conclusory statements are often given little weight: ***Utah v Zelisko***, 2025 ABKB 582 at para 63, citing ***McDonald v Sproule Management GP Limited***, 2023 ABKB 587 at para 96, aff'd ***Sproule Management GP Limited v McDonald*** (November 6, 2024), Calgary (Alta CA) (Antonio, Woolley and Feehan JAs). Such assertions alone would not normally establish irreparable harm or imminently threatened and highly probable irreparable harm.

[141] However, in this case, I find that ILP has discharged its burden to show that there is highly probable and imminent irreparable harm that it will suffer if an injunction is not granted.

[142] First, where there is a clear breach of an enforceable restrictive covenant, irreparable harm and balance of convenience are still considered but may attract less weight: ***Chatters*** at para 118; ***City Wide Towing*** at para 28; ***364661 Alberta Ltd v 735608 Alberta Ltd***, 2010 ABCA 6 at para 8; ***Dentalcorp Health Services Ltd v Dr JS Minhas Dental Corp***, 2024 BCSC 2006 at para 129 [***Dr JS Minhas Dental***]; ***Dreco Energy*** at para 15. This is particularly so when the restrictive covenant is to enforce a non-competition clause that is an integral feature of a business sale: ***ServiceMaster*** at para 106. As noted above, there is a strong *prima facie* case that Jawad breached, and will continue to breach the Non-Competition Clause that was an integral part of the APA.

[143] Second, where a contract includes a clause by which the parties have agreed that a breach of a restrictive covenant will give rise to irreparable harm, and/or have agreed to an injunction or waived any defences to an injunction, this is important (but not determinative): ***Chatters*** at para 119; ***City Wide Towing*** at para 53; ***Dreco Energy*** at para 15; ***Demand Science*** at para 53; ***Rock Developments (Prince Albert) Inc v Carlton Spur Development Corporation***, 2017 SKQB 247 at paras 71-77; ***Dr JS Minhas Dental*** at para 127. Such clauses provide substantial evidence but cannot override the Court's exercise of its equitable discretion: ***Chatters*** at para 119.

[144] Clause 5.4(d) of the APA provided, in part (emphasis added)

> Seller Parties acknowledge that the terms of this Section 5.4 are reasonable and necessary for the protection of Buyer and the goodwill in the Business acquired by

> Buyer in the Business acquired by Buyer. **Seller Parties specifically acknowledge and agree that the breach or threatened breach by any of the Seller Parties** of their agreements and covenants contained in this Section 5.4 **would cause Buyer irreparable harm** not compensable solely in damages.

[145] Third, as noted above, there is a strong *prima facie* case that the DAI App will be directly competitive with the Dossier software product. Further, this is an imminent threat given the expected May 2026 launch of the DAI App. Jawad has made clear that he intends to collaborate with K-12 school districts and has already had dealings with some of ILP's customers.

[146] While it may be possible for ILP to track the loss of specific customers, this does not account for intangible market effects, loss of market share, or the inability to track which potential new customers that ILP may never get due to Jawad and DAI's conduct: ***Karavos*** at para 31; ***People Corporation #1*** at para 84; ***Dreco Energy*** at para 16.

[147] Fourth, as noted above, in my view, the evidence of imminent irreparable harm in this case goes beyond mere speculation. As I stated earlier, Jawad and DAI are targeting a niche market (K-12 school districts), including potential customers that do not use Dossier or a similar product, with an AI-enhanced product that serves at least some of the same functions as Dossier and, on the record before me, will likely do so better and faster using a stronger product. In those circumstances, it is not speculative to find that it is highly probable that this will cause irreparable harm to ILP in the form of damage to ILP's reputation, goodwill, and unquantifiable loss of sales. Again, this distinguishes this case from ***Chatters*** (relied upon by the Defendants), where, in a broad and more general retail market, there was no evidence to support an inference that one hair salon would cause irreparable harm to another salon almost 10 miles away.

[148] I find that ILP has established that it is highly probable that it will suffer irreparable harm imminently if an injunction is not granted.

G. Does the Balance of Convenience Favour an Injunction?

[149] The balance of convenience requires consideration of which party would suffer greater harm from the granting or refusal of the remedy: ***RJR-MacDonald*** at 334, 342; ***Vancouver Aquarium Marine Science Centre v Charbonneau***, 2017 BCCA 395 at para 69; ***McDonald v Alberta***, 2025 ABCA 175 at para 11.

[150] This is a factual inquiry based on the facts of each individual case, and may include consideration of numerous factors, non-exhaustively including the nature of the relief sought, the nature of the harm the parties contend they will suffer, the relative strengths of the parties' positions, and the public interest, among other things: ***Manitoba (AG) v Metropolitan Stores Ltd***, 1987 CanLII 79 (SCC) at paras 36-40; ***RJR-MacDonald*** at 350; ***Manchester Rose Group Inc v Rutherford Seniors Development Ltd***, 2025 ABKB 491 at para 51; ***White Raven*** at para 71; ***Ranchman's Holding Inc v Bull Bustin' Inc***, 2019 ABQB 220 at para 33.

[151] ILP has established that it will suffer irreparable harm if an injunction is not granted. ILP has established a strong *prima facie* case that there has been a clear breach of an enforceable restrictive covenant (the Non-Compete Clause) and that Jawad has breached and will continue to breach his fiduciary duty without an injunction.

[152] On the other hand, the harm to the Defendants may involve the termination of two employees, although it is possible that they could be deployed to work on permitted business activities. It may also potentially involve thrown away investment costs spent to date, although the Defendants have been aware of ILP's position since April 2025 and have nonetheless pressed ahead with the DAI App.

[153] The Defendants' harm will otherwise be temporary and the restraint on their trade or business will be limited. Pending trial or the end of the Restricted Period, the Defendants can pursue non-competitive opportunities in AI outside the education sector. Further, ILP has acknowledged that the Defendants can pursue AI opportunities in the education sector other than in the K-12 education sector, or AI opportunities in the K-12 education sector in geographical locations in which ILP did not carry on business.

[154] If they are successful at trial, the Defendants will also have some potential recompense through ILP's undertaking as to damages. The undertaking as to damages is an integral part of the balance of convenience and limits the risk to the defendant: ***Pendosi Holdings*** at para 24; ***Manchester Rose Group Inc v Rutherford Seniors Development Ltd***, 2025 ABKB 491 at para 77.

[155] As an injunction is an equitable remedy, delay in seeking relief from the Court is also a factor: ***Embedia Technologies Corporation v Blumell***, 2018 ABQB 222 at para 35. I find there has not been an unreasonable delay in this case. While it is possible that ILP could have determined earlier exactly what Jawad was doing, which may have permitted steps to be taken sooner, this does not erase the strong *prima facie* case of his failure to provide complete disclosure to his employer. Once ILP learned, with more detail, about Jawad and DAI's intentions in 2025, ILP applied for an injunction expeditiously and without delay. The delay between the Application being filed and the hearing of the Application is due to the parties' agreement to pause the process to allow them to explore resolution, following which they followed a reasonable schedule aligned with the Court's availability.

[156] I find that the balance of convenience favours ILP. ILP is more likely to suffer greater harm without the injunction than the Defendants will suffer if an injunction is granted.

H. Conclusion re: Injunction

[157] ILP is not entitled to an injunction as requested for the relief sought in paragraph 1(c) and (d) of the amended Application, related to solicitation and the Non-Solicitation Clause, because ILP failed to meet the strong *prima facie* standard for those claims.

[158] ILP is entitled to an injunction, but I find that the relief sought in paragraph 1(a) of the amended Application is too general and must be reduced in scope to reflect the specific claims in which ILP has established the elements required for an injunction. A general injunction prohibiting any business competitive with ILP is too broad and goes well beyond the alleged contractual or common law breaches of fiduciary duty, or the actual terms of the Non-Compete Clause.

[159] Accordingly, I find ILP is entitled to an injunction with two specific aspects:

(a) enjoining the Defendants, pending trial, from engaging in any business, directly or indirectly, that involves the creation or licensing of software products using AI in the K-12 education sector, which are directly competitive with ILP's Dossier software, in the geographical regions in which ILP did Dossier business as of August 2024; and

(b) specifically enforcing the Non-Compete Clause.

[160] The creation and licensing of the DAI App is captured by both (a) and (b) above.

[161] With respect to Clario, a dispute arose after oral argument, in the context of ILP's proposed amendments to its Application to clarify its relief sought, as to whether DAI's Clario application could be or should be captured by any injunction granted. As a result of my decision, it may be necessary to consider whether Clario is captured by (a) and/or (b) as set out above so that the parties have clarity on that question. I agree with the Defendants that, as a matter of procedural fairness, a further process is appropriate in the parties cannot reach a resolution on this question.

[162] I invite the parties to attempt to reach a resolution as to whether Clario is captured by (a) and/or (b) as set out above, failing which they may contact my office with their proposed processes and I will make a direction for a process to decide whether Clario is captured by the injunction.

V. Conclusion

[163] Although it did not achieve all the relief it sought, ILP obtained an injunction, including specifically in relation to the DAI App, which was its primary focus. I find that ILP has been substantially successful on the Application and is presumptively or *prima facie* entitled to costs: ***JWS v CJS***, 2022 ABCA 63 at para 24; ***McAllister v Calgary (City)***, 2021 ABCA 25 at para 21.

[164] In the event the parties are unable to reach agreement on costs of the Application, the following process shall apply:

(a) within 4 weeks of this decision, ILP shall file and serve on the Defendants and submit to my office a written cost submission setting out its costs position;

(b) within 6 weeks of this decision, the Defendants shall file and serve on ILP and submit to my office a written costs submission setting out his costs position;

(c) each party's costs submission will be a maximum of 5 pages (excepting attachments, including authorities, draft proposed bill of costs, and cost summaries), single spaced in letter format, and shall provide (at a minimum):

(i) their position with respect to the factors set out in rule 10.33;

(ii) any formal offer under the *Rules* or other offer they wish considered, that predates these Reasons;

(iii) a draft proposed bill of costs as would be ordered under Schedule C; and

(iv) proof of the actual costs that the party incurred in respect of the action to date, and a summary of their proposed solicitor-client costs (costs that a reasonable client might be required to pay for the services rendered: ***Barkwell v McDonald***, 2023 ABCA 87 at para 56).

[165] If no submissions are received pursuant to this direction, there shall be no order as to costs for the Application.

[166] In the event that the parties cannot agree on whether Clario is captured by the injunction, any costs of a subsequent process to determine that question will be reserved for determination in that process.

Heard on the 4th day of February and the 10th day of March, 2026.
Dated at the City of Calgary, Alberta this 30th day of March, 2026.

M.A. Marion
J.C.K.B.A.

Appearances:

Judd M. Blitt and Avinash Kowshik
for Intellimedia Limited Partnership, by its General Partner Intellimedia GP Inc.

Matthew Vernon and Janika Sumaylo
Ahmad Jawad and DOCEOAI Analytics Inc.