IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

Citation: *Labrador Marine Inc. v. Canadian Imperial Bank of Commerce*, 2026 NLSC 43
Date: April 7, 2026
Docket: 202601G1688

BETWEEN:

LABRADOR MARINE INC.

APPLICANT

AND:

CANADIAN IMPERIAL BANK OF COMMERCE

RESPONDENT

Before: Justice Justin S.C. Mellor
Edited Transcript of Oral Reasons for Judgment

Place of Hearing:	St. John's, Newfoundland and Labrador
Dates of Hearing:	March 18 and 26, 2026
Date of Oral Judgment:	April 1, 2026

Summary:

Labrador Marine Inc. received an email from an Unknown Person(s) impersonating one of its suppliers. The email indicated that the Supplier's banking information had changed and it requested payment be made to a bank account in Toronto, Ontario. After the money was paid, Labrador Marine Inc. determined that the request for payment was fraudulent. It applied to this Court to obtain a Mareva injunction to freeze the bank account in Toronto and

a Norwich order to compel the bank to disclose information about the Unknown Person(s).

Held: The Mareva injunction and the Norwich orders are granted.

Appearances:

Geoffrey L. Spencer, K.C.	Appearing on behalf of the Applicant
No Appearance	On behalf of the Respondent

Authorities Cited:

CASES CONSIDERED: *Derby & Co. v. Weldon (no.6)*, [1990] 3 All E.R. 263 (Eng. C.A.); *Obegi Chemicals LLC v. Kilani*, 2011 ONSC 1636; *Van Breda v. Village Resorts Ltd*., 2012 SCC 17; *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; *Cho v. Twin Cities Power-Canada U.L.C.*, 2012 ABCA 47; *Noreast Electronics Co. Ltd. v. Danis*, 2018 ONSC 879; *Clark v. Nucare PLC*, 2006 MBCA 101; *Kepis & Pobe Financial Group Inc. v. Timis Corporation*, 2018 BCCA 420; *Fernandes v. Legacy Financial Systems, Inc.*, 2020 BCSC 885; *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5; *Bruno Appliance and Furniture Inc. v. Hryniak*, 2014 SCC 8; *Musson Cattell Mackey Partnership Architects Designers Planners v. Maki*, 2014 BCSC 2439; *Lyons v. Creason*, 2008 ABQB 550; *Norwich Pharmacal Co. v. Customs & Excise Commissioners*, [1974] A.C. 133 (U.K. H.L.); *Glaxo Wellcome PLC v. Minister of National Revenue*, [1998] 4 F.C. 439, 162 D.L.R. (4th) 433 (C.A.); *Alberta Treasury Branches v. Leahy*, 2000 ABQB 575; *GEA Group AG v. Ventra Group Co.*, 2009 ONCA 619; *Isofoton S.A. v. Toronto Dominion Bank* (2007), 85 O.R. (3d) 780, 282 D.L.R. (4th) (Sup. Ct.); *1654776 Ontario Ltd. v. Stewart*, 2013 ONCA 184; *Royal Bank of Canada v. Trang*, 2016 SCC 50; *Tournier v. National Provincial and Union Bank of England*, [1924] 1 KB 461(Eng. C.A.)

STATUTES CONSIDERED: *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5

TEXTS CONSIDERED: Crerar, David A., *Mareva and Anton Piller Preservation Orders in Canada: A Practical Guide* (Toronto: Irwin Law, 2017)

REASONS FOR JUDGMENT

MELLOR, J.:

INTRODUCTION

[1] Labrador Marine Inc. (LMI) claims to have been the victim of financial fraud by Unknown Person(s) and is now applying to this Court for a Mareva injunction and a Norwich order.

[2] The Mareva injunction is to freeze the Unknown Person(s) bank account at the Canadian Imperial Bank of Commerce (CIBC), 1 Queen Street E., Toronto, Ontario.

[3] The Norwich order is to compel CIBC to produce information related to that account including the name(s), mailing addresses, email addresses and telephone numbers associated with the registered holder of the CIBC account.

[4] On 18 March 2026, I instructed counsel for LMI to provide notice to CIBC of the *ex parte* Application.

[5] CIBC did not appear at the hearing of the Application. In correspondence, it indicated that it would take no position on the Application, provided LMI did not seek costs against it, and that it was given a reasonable amount of time to disclose the banking information.

[6] Having considered the affidavit evidence and the legal arguments presented by LMI, I have decided to grant both the Mareva injunction and the Norwich order.

BACKGROUND

[7] On 13 November 2025, LMI received an invoice for equipment it had ordered from one of its suppliers. The invoice was for $373,938.66.

[8] On 14 November 2025, Unknown Person(s) emailed LMI, impersonating their Supplier. The Unknown Person(s) stated that the Supplier's bank account information had changed. They requested that payment for the equipment be made to a CIBC account located at a branch in Toronto, Ontario.

[9] As a result of the Unknown Person(s) representations, LMI changed the banking information that it had on record for the Supplier. On 25 November 2025, LMI made a payment of $373,938.66 to the CIBC account on a false understanding that this money was being sent to the Supplier.

[10] On 17 December 2025, the Royal Bank of Canada notified LMI that CIBC had flagged the transaction as potentially fraudulent. On that same day, LMI contacted the Supplier who confirmed that it had not changed its banking information and that the transaction was indeed fraudulent.

[11] LMI now seeks a Mareva injunction to freeze the CIBC account and prevent the dissipation of funds. It is also applying for a Norwich order to compel CIBC to provide information about the account so it may pursue legal action to recover the funds from the Unknown Person(s).

ISSUES

1. Should this Court issue a Mareva injunction freezing the CIBC account of the Unknown Person(s)?

2. Should a Norwich order be issued requiring CIBC to disclose information relating to the bank account?

ANALYSIS

1. Should this Court issue a Mareva injunction freezing the CIBC account of the Unknown Person(s)?

Jurisdiction

[12] Before determining whether LMI has met the requirements for a Mareva injunction, it is first necessary to consider whether this Court possesses jurisdiction.

[13] While LMI is a Newfoundland and Labrador company, it is seeking to freeze an Ontario bank account belonging to Unknown Person(s) who could reside anywhere in the world.

[14] A Mareva injunction is an equitable remedy that acts *in personam* (against the person) and not *in rem* (against the property). In *Derby & Co. v. Weldon (no.6)*, [1990] 3 All E.R. 263 (Eng. C.A.), at p. 273, Dillon, L.J. explained a court's jurisdiction as follows:

> The jurisdiction of the court to grant a Mareva injunction against a person depends not on the territorial jurisdiction of the English court over assets within its jurisdiction, but on the unlimited jurisdiction of the English court in personam against any person, whether an individual or a corporation, who is, under English procedure, properly made a party to proceedings pending before the English court.

[15] For a court to issue a Mareva injunction, a defendant must be present within the court's jurisdiction or have attorned it. (Crerar, David A., *Mareva and Anton*

Piller Preservation Orders in Canada: A Practical Guide (Toronto: Irwin Law, 2017) at p. 39)

[16] In this Application, it is not clear that this Court has *in personam* jurisdiction over the Defendant(s) due to their unknown whereabouts.

[17] The issue of jurisdiction over a defendant in respect of a Mareva injunction arose in *Obegi Chemicals LLC v. Kilani*, 2011 ONSC 1636. In that case, there was a motion to set aside and permanently stay a worldwide Mareva injunction. The defendants in *Obegi* were in Nova Scotia, the alleged wrongful acts occurred outside of Canada, and the money that was subject to the freezing order was in a bank in Ontario. Justice Ratushny of the Ontario Superior Court of Justice assumed jurisdiction because there was a real and substantial connection between Ontario and the defendants. Alternatively, she also found she had jurisdiction based on the necessity doctrine.

[18] In *Van Breda v. Village Resorts Ltd*., 2012 SCC 17, the Supreme Court of Canada created a two-step "real and substantial connection" test. At the first step, the plaintiff must identify "… a presumptive connecting factor that links the subject matter of the litigation to the forum." At the second step, a defendant can attempt to rebut the strength of the connection.

[19] Justice LeBel identified the factors that give rise to a "real and substantial" connection. At paragraph 90, he stated:

> … in a case concerning a tort, the following factors are presumptive connecting factors that, *prima facie*, entitle a court to assume jurisdiction over a dispute:
>
> (a) the defendant is domiciled or resident in the province;
>
> (b) the defendant carries on business in the province;
>
> (c) the tort was committed in the province; and
>
> (d) a contract connected with the dispute was made in the province.

[20] LMI asserts that the connecting factor in this case is that the tort was committed in Newfoundland and Labrador. The affidavit evidence supports this position. The false invoice with the Unknown Person(s) CIBC account number was addressed and transmitted to LMI's office in Conception Bay South, NL. The authorization to pay the false invoice also occurred in this province.

[21] Based on this evidence, I find that there is a real and substantial connection between the subject matter and this forum such that this Court is entitled to assume jurisdiction. Since this is only an *ex parte* application, the Unknown Person(s) is always free to bring forth an application to rebut the strength of the connection and attempt to set aside the order based on a lack of jurisdiction.

Test for a Mareva Injunction

[22] There are no reported decisions in Newfoundland and Labrador setting out the requirements for a Mareva injunction. As a result, LMI referred this Court to cases from Alberta. In that jurisdiction, an applicant must satisfy the usual tripartite test for an injunction established by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, as well as proving a strong *prima facie* case and "… that there is a real risk that the respondent will remove assets from the jurisdiction, or dissipate them, in order to avoid execution (enforcement) under a judgment." (*Cho v. Twin Cities Power-Canada U.L.C.*, 2012 ABCA 47, at para. 5)

[23] Not all Canadian courts accept that it is necessary to apply the tripartite test for an interlocutory injunction on top of the Mareva injunction test. In *Noreast Electronics Co. Ltd. v. Danis*, 2018 ONSC 879, Justice Gomery observed at paragraph 36, that the elements of the *RJR* test are embedded in the Mareva injunction test. This is a valid point. If there is a strong *prima facie* case under the Mareva test, it is difficult to understand how there is not "a serious issue to be tried" under the *RJR* test.

[24] Appellate courts in different provinces have taken somewhat different approaches to Mareva injunctions. As Scott, C.J.M. pointed out in *Clark v. Nucare*

PLC, 2006 MBCA 101, at paras. 37-38, Ontario and some other jurisdictions focus on what is termed the “risk of harm … whether a defendant's conduct in removing assets from the jurisdiction or disposing of them is for the purpose of avoiding judgement”, whilst in British Columbia, "[t]he overarching consideration in each case is the balance of justice and convenience between the parties”.

[25] In *Kepis & Pobe Financial Group Inc. v. Timis Corporation*, 2018 BCCA 420, at para. 18, the British Columbia Court of Appeal summarized the approach in that province as follows:

> … British Columbia has forged a flexible approach to applications for *Mareva* injunctions from the more stringent rules-based approach in *Aetna*. Under this approach, "[t]he fundamental question in each case is whether the granting of an injunction is just and equitable in all the circumstances of the case": *Mooney v. Orr No. 2* at para. 43. The legal test requires an applicant to establish: (1) the threshold issue of a strong *prima facie* or good arguable case; and (2) in balancing the interests of the parties, to consider all the relevant factors, including (i) the existence of exigible assets by the defendant both inside and outside the jurisdiction, and (ii) whether there is evidence of a real risk of disposal or dissipation of those assets that would impede the enforcement of any favourable judgment to the plaintiff.

[26] The advantage of the flexible approach is that courts may, depending on the facts of the case, consider a host of other factors that may be relevant to determining the balance of convenience. (*Fernandes v. Legacy Financial Systems, Inc.*, 2020 BCSC 885, at para. 17)

[27] Equitable remedies are inherently more flexible than legal remedies. Given that Mareva injunctions are discretionary and engage questions of fairness, I have determined that the more flexible British Columbia approach that was summarized in *Kepis & Pobe Financial Group Inc.* should be applied to LMI’s application.

Strong Prima Facie Case

[28] To obtain a Mareva injunction, an applicant must show a "strong *prima facie* case". This is a higher threshold than the “serious issue to be tried” that is required for an interlocutory injunction. In *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5, Justice Brown explained what “strong *prima facie* case” means. At paragraph 17, he stated:

> Common to all these formulations is a burden on the applicant to show a case of such merit that it is very likely to succeed at trial. Meaning, that upon a preliminary review of the case, the application judge must be 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 set out in the originating notice.
>
> [emphasis in original]

[29] LMI asserts that it has established a strong *prima facie* case of civil fraud. The elements of that tort were summarized by Karakatsanis, J. in *Bruno Appliance and Furniture Inc. v. Hryniak*, 2014 SCC 8, at para. 21, as follows:

> (1) a false representation made by the defendant;
>
> (2) some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness);
>
> (3) the false representation caused the plaintiff to act; and
>
> (4) the plaintiff’s actions resulted in a loss.

[30] The affidavit evidence of Stephanie Normore who is LMI’s Vice President and Controller satisfies the requirement of establishing a strong *prima facie* case of civil fraud. Attached as exhibits to her affidavit are: 1) an email from the Unknown Person(s) impersonating LMI’s Supplier and inducing LMI to make a payment into the fraudulent supplier’s account; and 2) proof that LMI paid the invoice by depositing money into the Unknown Person(s) CIBC account thereby causing a loss.

[31] There is also an affidavit from Ramy Hamed, who is the service manager of the Supplier. His evidence is that after the alleged fraud, LMI paid the Supplier the full balance of the invoice. His evidence confirms that LMI suffered a loss.

Balance the Interests of the Parties

[32] Having established a strong *prima facie* case, a plaintiff must show that the balance of convenience is in its favour. A key consideration in balancing the interest of the parties is the risk that the assets will be dissipated. LMI has not put forward any evidence that the Unknown Person(s) will drain the funds from the CIBC account. However, the risk of asset dissipation can be inferred from fraudulent conduct. As Justice Harris explained in paragraph 16 of *Musson Cattell Mackey Partnership Architects Designers Planners v. Maki*, 2014 BCSC 2439:

> Fraud is an exception to the general hostility to prejudgment execution, *Aetna* at para. 12 - 14 in *Netolitzky* at para. 24 - 31. A risk of dissipation may be inferred from the evidence related to the plaintiffs' strong *prima facie* case, *Insurance Corp. of British Columbia v. Patko*, 2008 BCCA 65 (B.C. C.A.). Such an inference is justified where parties were involved in frauds which "involve substantial taking of assets from the plaintiff in a manner where the fraud was concealed and from which a clear inference could be drawn that the defendant will continue to act in the same way", *Patko* at para. 31.

[33] In *Lyons v. Creason*, 2008 ABQB 550, at para. 42, the court commented that it was enough for the plaintiffs to establish that there are "… reasonable grounds for believing that the Defendants might deal with the exigible property to the Plaintiffs' prejudice."

[34] In LMI's case, it has established a strong *prima facie* case that the Unknown Person(s) have committed the tort of civil fraud against it. From this, it is reasonable to infer that there is a high risk of asset dissipation and that the Unknown Person(s) will not abide by any order of this Court or fulfil any obligations they may owe to the Plaintiff.

[35] In considering the balance of interests, it is important to consider not just LMI's interests but also the public interest. Interjurisdictional fraud is a growing problem and the public interest weighs in favour of courts taking measures to protect the economic interests of victims of fraud.

[36] In conclusion, after considering what is just and equitable in all the circumstances of the case, I am prepared to grant the order for a Mareva injunction for a period of 60 days.

2. Should a Norwich order be issued requiring CIBC to disclose information relating to the bank account?

[37] LMI is seeking a Norwich order to identify the Unknown Person(s) who are associated with the CIBC account. Norwich orders originate from the English case of *Norwich Pharmacal Co. v. Customs & Excise Commissioners*, [1974] A.C. 133 (U.K. H.L.). It is an equitable remedy that allows a party to engage in pre-trial discovery for the purposes of identifying a wrongdoer. (*Glaxo Wellcome PLC v. Minister of National Revenue*, [1998] 4 F.C. 439, 162 D.L.R. (4th) 433 (C.A.)) They are frequently brought against an innocent third party who holds records relevant to a plaintiff's claim. In LMI's Application, the order is sought against CIBC. However, there is no allegation that CIBC was involved in the fraud; it is simply in possession of records that may assist LMI in identifying the Defendant.

[38] In *Alberta Treasury Branches v. Leahy*, 2000 ABQB 575, at para. 106, Justice Mason set out the five requirements for granting Norwich order. They are as follows:

> (i) Whether the applicant has provided evidence sufficient to raise a valid, bona fide or reasonable claim;
>
> (ii) Whether the applicant has established a relationship with the third party from whom the information is sought such that it establishes that the third party is somehow involved in the acts complained of;
>
> (iii) Whether the third party is the only *practicable* source of the information available;

> (iv) Whether the third party can be indemnified for costs to which the third party may be exposed because of the disclosure, some refer to the associated expenses of complying with the orders, while others speak of damages; and
>
> (v) Whether the interests of justice favour the obtaining of the disclosure.
>
> [emphasis in original]

[39] These factors have been employed by courts in other provinces, including the Ontario Court of Appeal in *GEA Group AG v. Ventra Group Co.*, 2009 ONCA 619, at para. 62. I will now apply these factors to LMI's case.

1. Sufficient evidence to raise a *bona fide* claim

[40] The requirement to establish a *bona fide* claim is a relatively low one. In *Isofoton S.A. v. Toronto Dominion Bank* (2007), 85 O.R. (3d) 780, 282 D.L.R. (4th) (Sup. Ct.), at para. 42, the court stated that a *bona fide* claim is one that is not "frivolous or vexatious". In *1654776 Ontario Ltd. v. Stewart*, 2013 ONCA 184, at para. 58, the Ontario Court of Appeal indicated "… that the threshold for granting disclosure is designed to facilitate access to justice by victims of wrongdoers whose identity is not known. Judicial treatment of the *Norwich* application procedure should reflect its nature as an equitable remedy."

[41] In my earlier analysis of LMI's Mareva injunction application, I found that the affidavit evidence of Stephanie Normore and Ramy Hamed established a "strong *prima facie* case" for civil fraud. This standard is considerably higher than the *bona fide* claim standard required for a Norwich order.

[42] Based on the affidavits and the attached exhibits, I am satisfied that LMI has a *bona fide* claim against the Unknown Person(s).

2. Clear connection between the Applicant and the Third Party

[43] Banks are frequently the subject of Norwich orders as they are the conduit by which funds are transferred. As Justice Spence explained in *Isofoton S.A.*, at para. 50:

> Without the bank's involvement, the wrongful receipt and possible transfer of funds could not have occurred, and it is the confidential information possessed by the bank that will lead the applicant to the information required to determine whether a legal proceeding is appropriate.

[44] There is no doubt about the connection between LMI and CIBC. The affidavit of Ms. Normore confirms that the money was deposited into the CIBC account and that it was CIBC that flagged the account for potential fraud.

3. The Respondent is the only practicable source for the information

[45] The only information that LMI has concerning the fraud is that the money was deposited into the CIBC account. Obtaining the banking records is the company's only means to identify the Unknown Person(s) and potentially recover the money. There are simply no other options available to the company.

4. The Respondent will be indemnified for its costs

[46] LMI has provided a draft order stating that it will pay "reasonable costs incurred by the Respondent in complying with this Order." This is sufficient to meet the requirement for indemnification of costs.

5. The interests of justice

[47] At this stage, I am required to consider the interests of justice. LMI is requesting disclosure of banking information without the knowledge or consent of the Unknown Person(s) who own the CIBC account. This requires balancing the benefit to LMI from compelling disclosure against the privacy interests of the Unknown Person(s).

[48] In *Royal Bank of Canada v. Trang*, 2016 SCC 50, the Supreme Court of Canada noted at paragraph 36 that "… financial information is generally extremely sensitive." This sensitivity is reflected in the fact that the information LMI seeks is protected by both statutory and common law.

[49] The statutory protection comes from the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, (PIPEDA). This *Act* regulates the collection and disclosure of personal information by certain private sector organizations, including banks.

[50] In addition to the information being protected under PIPEDA, the common law recognizes that the contractual relationship between banks and their clients has an implied condition of confidentiality. (*Tournier v. National Provincial and Union Bank of England*, [1924] 1 KB 461(Eng. C.A.))

[51] Both PIPEDA and the common law recognize exceptions to the prohibition against disclosure of personal information without consent. Section 7(3)(c) of PIPEDA creates an exception to the requirement for consent where there is "an order made by a court".

[52] In *Tournier*, at p. 562, Lord Atkin discussed exceptions to the obligation not to disclose banking information. He recognized that an exception should be made

"… for protecting the bank or persons interested or the public against fraud or crime."

[53] Fraud is an ever-growing problem that imposes high costs on both individuals and society. While the records sought by LMI contain sensitive personal information, the interests of justice and the public interest outweigh the Unknown Person(s) privacy interest.

DISPOSITION

[54] LMI is granted the Mareva injunction and Norwich order as drafted. The 60-day duration of the orders is necessary because CIBC has indicated that it will require at least 30 days to provide information related to the account.

JUSTIN S.C. MELLOR
Justice