IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *RCG Forex Service Corp. v. HSBC Bank Canada,* 2011 BCSC 315

Date: 20110316

Docket: S132561
Registry: New Westminster

Between:

RCG Forex Service Corp.

Plaintiff

And:

HSBC Bank Canada

Defendant

Corrected Judgment: The text of the judgment was corrected at paragraph 37 on April 26, 2011

Before: The Honourable Justice Verhoeven

Reasons for Judgment

Counsel for the Plaintiff:	K. Ducey S. May
Counsel for the Defendant:	R. Dawkins D. Cowper
Place and Date of Hearing:	NewWestminster, B.C. February 8, 2011
Place and Date of Judgment:	NewWestminster, B.C. March 16, 2011

I. INTRODUCTION

[1] The plaintiff, RCG Forex Service Corp. (“RCG”), applies for an injunction to restrain the defendant, HSBC Bank Canada (“HSBC”), from closing seven bank accounts that RCG maintains

at HSBC, until further order of the court. In effect, RCG seeks an interlocutory injunction which would restrain HSBC until the trial of the action RCG has brought.

[2] The central issue presented by RCG's action is whether HSBC is obliged to continue to keep the accounts open and to service RCG's business. The central issue on this application is whether an interlocutory injunction should be granted which would restrain HSBC from closing the accounts until the trial of the action.

II. BACKGROUND

[3] RCG provides foreign exchange services. The bank accounts with HSBC are in various national currencies, such as Canadian, U.S., British, Japanese, Hong Kong, Swiss, and Euros. RCG uses the accounts in its business. RCG says that if the accounts are closed, it will lose clients and profits, and its reputation will suffer.

[4] On August 30, 2010, HSBC notified RCG that it would be closing the accounts effective September 30, 2010. RCG appealed to HSBC to reconsider. HSBC provided extensions. But on November 4, 2010, HSBC confirmed its decision to close the accounts, effective December 31, 2010. HSBC then provided further extensions to the date of the hearing of RCG's injunction application, February 8, 2011, and then to the date of the court's decision with the respect to the injunction application.

[5] RCG commenced its action against HSBC on January 24, 2011. The central allegation it makes in its action is that its agreement with HSBC relating to the accounts contains a number of unwritten terms, including that HSBC would not close the accounts without a "commercially reasonable justification". It contends that HSBC's decision to close the accounts is in breach of the agreement as alleged by RCG. Its Notice of Civil Claim also alleges misrepresentations by HSBC regarding the terms of the agreement; interference with economic relations; a breach of duty of good faith; estoppel; breach of fiduciary duty; and in the alternative to breach of the term prohibiting closure of the accounts: breach of a term to provide reasonable notice before closing the accounts.

III. LEGAL FRAMEWORK

[6] The traditional two-pronged test utilized in British Columbia for the granting of an interim injunction was described as follows by K. Smith J.A. for the Court of Appeal in *Onkea Interactive Ltd. v. Smith*, 2006 BCCA 521, 60 B.C.L.R. (4th) 29:

> 9 This Court described the test for the granting of an interlocutory injunction in *British Columbia (A.G.) v. Wale* (1986), 9 B.C.L.R. (2d) 333 at 345, [1987] 2 W.W.R. 331; aff'd [1991] 1 S.C.R. 62, [1991] 2 W.W.R. 568 [*Wale*], in this way:
>
> > The traditional test for the granting of an interim injunction in British Columbia is two-pronged. First, the appellant must satisfy the court that there is a fair question to be tried as to the existence of the right which he alleges and a

> breach thereof, actual or reasonably apprehended. Second, he must establish that the balance of convenience favours the granting of an injunction.
>
> 10 The Supreme Court of Canada has also approved a three-pronged test, in which the question of irreparable harm is a separate inquiry: *Manitoba (Attorney General) v. Metropolitan Stores Ltd*., [1987] 1 S.C.R. 110 at 127-29, 38 D.L.R. (4th) 321; *RJR-MacDonald Inc. v. Canada (Attorney-General)*, [1994] 1 S.C.R. 311 at 334, 111 D.L.R. (4th) 385 [*RJR-MacDonald*]. However, this Court commonly applies the test in *Wale*, which acknowledges, as Madam Justice Saunders said for the Court in *Roxul (West) Inc. v. 445162 B.C. Ltd.* (2001), 89 B.C.L.R. (3d) 21, 2001 BCCA 362, that,
>
> > [13] . . . The issue of irreparable harm is bound up in the issue of balance of convenience. So, too, is consideration of the adequacy of damages as a remedy for the parties, recognizing that prudence counsels preservation of the status quo where damages might not be an adequate remedy.

[7] The applicant's burden on the first prong of the two part test is a low one. It must demonstrate only that its claim is not frivolous or vexatious: *RJR-MacDonald*, *supra* at 335b. There, the first part of the test is referred to as the applicant's burden to establish a "serious question to be tried". The expressions "fair question" (as used in *Wale)* and "serious question" (as used in *RJR-MacDonald*) are equivalent.

[8] Alberta authorities state that a customer of a bank seeking to prevent the bank from terminating the banking relationship by closing the customer's accounts is seeking a mandatory injunction. I agree with that proposition. It applies in this case. In seeking to prevent HSBC from closing the accounts, RCG is seeking an order that compels HSBC to continue doing business with RCG, against HSBC's express will.

[9] The law in Alberta is that where the applicant seeks a mandatory injunction, the first part of the test is more onerous than would otherwise be the case. Proof of a strong *prima facie* case is required: *B-Filer Inc. v. Bank of Nova Scotia*, 2005 ABQB 704, [2005] A.J. No. 1240 (QL) at para. 24; and *B-Filer Inc. v TD Canada Trust*, 2008 ABQB 749, [2008] A.J. No. 1397 (QL) at para. 20.

[10] British Columbia authorities state that the mandatory nature of the injunction sought does not affect the first part of the test. The mandatory nature of the order sought should be considered within the second part of the test, regarding the question of the balance of convenience: *Powerscreen of Canada (Western) Ltd. v. Powerscreen International Distribution Ltd*., 2003 BCSC 1353 at paras. 47-50, [2003] B.C.J. No. 2154 (QL), citing *Hedstrom v. Manufacturers Life Insurance Company*, 2002 BCSC 1502 at para. 36, [2002] B.C.J. No. 2463 (QL).

[11] The factors that should be considered on the second part of the test (balance of convenience) are:

1. whether one of the parties will suffer irreparable harm from granting or not granting

the injunction;

2. the strength of the applicant's case;
3. which of the parties has acted to alter the balance of the relationship and so affected the *status quo*;
4. factors affecting the public interest; and
5. any other factor.

See *Bell Mobility Inc. v. Telus Communications Co.*, 2006 BCCA 578 at para. 12, 27 B.L.R. (4th) 194, citing *Canadian Broadcasting Corp. (CBC) v. CKPG Television Ltd.* (1992) 64 B.C.L.R. (2d) 96, 1992 CarswellBC 31 at para. 23 (C.A.).

IV. ANALYSIS

A. Is there a fair question to be tried?

[12] Subject to exceptions not applicable here, at this stage, only a preliminary assessment of the merits of the case is required. A prolonged examination of the merits is generally neither necessary nor desirable: *RJR-MacDonald*, *supra*, at 337e-338a

(i) RCG's Position

[13] Through its President and Chief Executive Officer, Mr. James Ho, RCG says that it began doing business with HSBC in or about 1994. Mr. Ho says that he "understood" that the business relationship would be governed by various terms, express or implied, including that RCG would use the accounts opened with HSBC as a vehicle for its foreign exchange brokerage business, and that HSBC would not close the accounts without a "commercially reasonable justification". He says that both HSBC and RCG "have acted from the outset as though the contractual relationship between the parties would be of indefinite duration". He says that RCG has built its business on the understanding that he had. He argues that "HSBC must have known that they were the only bank who could provide us with the facility to hold accounts in a number of international currencies, and that we relied on this in the development of our business".

[14] Mr. Ho says that a large proportion of RCG's clients also bank at HSBC. This is convenient for RCG's clients, as it allows direct transfer of money from the client's HSBC bank accounts to the accounts of RCG and vice versa, both locally and internationally. The same service would not be available to RCG's clients who have their accounts at HSBC if RCG's HSBC accounts are closed. So Mr. Ho says that if RCG loses its HSBC accounts, RCG faces a risk of loss of these customers. HSBC answers by saying that RCG's customers could transfer funds to it via electronic funds transfers or by other means. RCG says this would result in increased costs, inconvenience and

delay to the customer.

[15] Mr. Ho says that RCG's relationship with HSBC has been beneficial to HSBC, in that RCG regularly refers clients to HSBC for banking services. He says that HSBC has encouraged RCG to refer RCG's clients to HSBC.

[16] RCG is considered a "money service business" ("MSB") which is subject to federal government anti-money laundering ("AML") rules established by the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC"). RCG is registered with FINTRAC. Mr. Ho maintains that as part of its anti-money laundering policies, RCG does not accept cash payments from clients. He says that RCG complies with industry-standard anti-money laundering rules and procedures. He says that HSBC has not identified any AML concerns in relation to RCG's accounts. He notes that HSBC's sister company, HSBC plc, a British bank, appears to be satisfied with RCG's AML compliance as it continues to do business with RCG, following RCG's response to an information request from HSBC plc in late 2009. In Mr. Ho's view, the decision of HSBC to close the accounts is not based upon a proper assessment of risk. He says that HSBC has not afforded RCG a fair opportunity to demonstrate that its business does not present a risk to HSBC.

[17] Mr. Ho does not say that there are no other foreign exchange banking services available to RCG, but he says that no other bank offers the same range of foreign currency accounts as HSBC. Without the HSBC accounts RCG would not be able to service its clientele as effectively. Therefore, he says that if RCG loses its HSBC accounts, it will lose a significant number of its clients. RCG will lose profits "in the hundreds of thousands of dollars" and it will suffer damage to its reputation and business good will. The damages would be virtually impossible to quantify. There would be a detrimental effect upon RCG's relationship with other financial institutions.

(ii) HSBC's Position

[18] HSBC was unable to locate customer account agreements relating back to the commencement of the relationship between RCG and HSBC in 1994. However, account documentation from 2005 was located. RCG agreed to be bound by a Commercial Account Operating Agreement, containing the following terms:

> (a) We have made no representations, warranties or agreements except as disclosed in this Agreement and no change in this Agreement will be valid unless it is signed in writing by both you and us;
>
> (b) We have the right to make any changes to any services as we may deem necessary, provided however, that we will give you at least 30 days notice of such changes by providing you with written notice by posting a notice in our branches or on our website;
>
> (c) This Agreement may be terminated by you by a notice in writing delivered to us at the branch where your Account in maintained, and such termination will take effect immediately upon our receipt of the notice. **This Agreement may be terminated by us at any time without notice to you.**

[Emphasis added]

[19] HSBC says that a signature card signed on RCG's behalf on July 18, 2008 incorporated the terms of a 2007 Commercial Account Operating Agreement containing similar terms.

[20] In the affidavit on behalf of HSBC, HSBC says that as part of its ongoing risk assessment, it has identified the category of "MSB" customers, including businesses such as RCG, as being at high risk for money laundering. HSBC is subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, which sets out HSBC's duties with respect to prevention and detection of money laundering and terrorist financing, which HSBC describes as its "AML Duties". HSBC says that its AML Duties were significantly altered in 2008, including a requirement that HSBC conduct ongoing risk assessments of its business lines and customers to identify customers at higher risk for money laundering and terrorist financing transactions.

[21] In HSBC's view, RCG is a customer which exposes HSBC to risks. The risks require HSBC to take special measures. Dealing with customers such as RCG imposes additional operating costs, creates additional compliance risk, including administrative monetary penalties and possible criminal prosecution, creates risk that HSBC will itself be used in money laundering transactions, and exposes HSBC to reputational risk. As HSBC is seeking to limit its compliance exposure by reducing high risk business lines and customers in high risk business lines, HSBC decided to terminate its relationship with RCG. HSBC contends that RCG does not hold out any association with HSBC on its website, nor does RCG require its customers to have accounts at HSBC. HSBC denies that it is the only bank that offers accounts in Canada in currencies other than U.S. and Canadian dollars.

[22] RCG argues that it should not be considered a "higher risk" customer of HSBC, and argues that it has undertaken great efforts to ensure that its AML policies and compliance are at the highest standards. As noted, it has argued that HSBC failed to properly assess the risk.

[23] The issue on the application is not whether RCG has participated in money laundering or terrorist financing activities. HSBC does not suggest that it has done so. Indeed, HSBC does not seriously contend that it seeks to terminate the relationship due to any specific conduct of RCG. It simply wishes to discontinue doing business with RCG as being a customer that exposes it to business risks and results in higher regulatory and compliance costs to HSBC. Nor is the issue whether RCG does or does not present a business risk for HSBC, or whether HSBC's determination to terminate the relationship is well-grounded as a business decision.

[24] The application does not require the court to carefully scrutinize the reasons for the bank's decision to close RCG's accounts. RCG has not raised any credible evidence tending to suggest that the decision is not a *bona fide* business decision made by the bank in its own interests. The

issue is whether there is a fair or serious question concerning RCG's contention that HSBC is obliged to continue the relationship against HSBC's wishes.

(iii) Assessment

[25] Mr. Ho does not point to any concrete factual basis whatsoever for his assertion that he "understood" the agreement with HSBC contained contractual terms which required the bank to keep the accounts open indefinitely, and not to close the accounts without a "commercially reasonable justification". Mr. Ho does not allege that any person on behalf of the bank ever made such a promise or representation. There are no documents that support his view. RCG's written agreements with HSBC are directly contradictory to his contention.

[26] Absent corroborating objective evidence, Mr. Ho's subjective "understanding" of what he alleges are the terms of a contract purportedly entered by the parties does not assist in establishing such contractual terms.

[27] Determination as to the existence of a contract and interpretation of its terms are objective exercises. Evidence of one party's purely subjective intention is not relevant or admissable: *ASEAN Technology Partners Inc. v. Canada (National Research Council)*, 2007 BCSC 1539 at para. 73, [2007] B.C.J. No. 2273 (QL), aff'd 2009 BCCA 126, [2009] B.C.J. No. 561 (QL), citing *Eli Lilly & Co. v Novopharm and Apotex*, [1998] 2 S.C.R. 129 at 64, 161 D.L.R. (4th) 1; *Hammerton v. MGM Ford-Lincoln Sales Ltd.*, 2007 BCCA 188; 30 B.L.R. (4th) 183, at paras. 23-25.

[28] Similarly, statements by a party as to his or her subjective understanding of the terms of a contract, without more, is of no assistance.

[29] In this case, there is no objective evidence tending to show that HSBC agreed to the terms for which RCG contends. The evidence is strongly in the opposite direction. HSBC relies upon the written agreement, which is contrary to RCG's assertions.

[30] RCG is itself a sophisticated commercial enterprise. It seeks to impose contractual obligations upon HSBC that are not found in any written agreement, and indeed are contrary to the applicable agreement.

[31] If the continuation of the HSBC accounts was vital to its business, as RCG contends, it was always open to RCG to seek a formal contractual commitment from HSBC. It apparently never did so. RCG now seeks to have the court impose a contractual commitment upon HSBC which HSBC never made and was never asked to make.

[32] As a general rule, a bank may terminate its relations with a customer by giving notice to that effect. Absent an express or implied agreement fixing a specific period of notice, the bank must

give reasonable notice. What is reasonable is a question of fact to be determined in the circumstances of the case: Bradley Crawford, *The Law of Banking and Payment in Canada* (Aurora, Ontario: Canada Law Book, 2008) [*Crawford on Banking*] at p. 9-132.

[33] RCG's primary argument is that HSBC is not entitled to close the accounts unless it establishes that it has a "commercially reasonable justification". There is no support for this proposition in law. Such a term would be unreasonable in that it would require the court to impose a hopelessly vague and uncertain term upon the parties. A judicial determination would be required in practically all cases. The court would effectively become the supervisor of the banking relationship.

[34] In summary, there is no merit to RCG's contention that HSBC may not terminate the banking relationship without a "commercially reasonable justification".

(iv) Reasonable Notice

[35] RCG argues, in the alternative, that it is entitled to reasonable notice of the closure of the accounts, notwithstanding the terms of the written agreement which provide that HSBC may terminate at any time without notice.

[36] RCG provides no evidentiary basis to suggest that its asserted losses would be ameliorated by a period of notice, or that lack of reasonable notice has or will result in loss to it. It is plain that RCG would not be at all satisfied merely with some period of notice. What it really seeks in its action is that HSBC be indefinitely restrained from closing the accounts. On the hearing of the application, its counsel made no submission as to the period of notice that RCG asserts would be reasonable.

[37] HSBC provided initial notice of 30 days prior to termination. It then extended the notice a further three months to December 31, 2010. It continued to operate the accounts to the hearing of the application, February 8, 2011, and to the present day. I see no merit in a claim that HSBC is obliged to provide notice for longer than RCG has in fact received. Moreover, breach of an obligation to provide reasonable notice prior to termination would justify, at best, only an interim injunction, lasting until the end of such period of notice as would be reasonable. It would not justify the granting of the interlocutory injunction (that is, for the period to trial) that the plaintiff now seeks.

[38] Accordingly, RCG's alternative argument for reasonable notice provides no basis for the interlocutory injunction sought on this application.

(v) Duty of Good Faith, & Fiduciary Duty

[39] RCG also argues that HSBC is in breach of an implied duty of good faith to it. This

submission is merely a permutation of RCG's argument that HSBC is contractually bound not to close the accounts without a "commercially reasonable justification". RCG does not point to any particular bad faith conduct on the part of HSBC, other than, in its view, HSBC's decision to close the accounts without what RCG considers reasonable grounds.

[40] There is no stand-alone duty of good faith in the performance of contractual obligations, independent of the terms of the contract. The jurisprudence establishes that there is an implied duty of good faith not to act in a way that defeats or eviscerates the very purpose and objective of the agreement: *Nareerux Import Co. Ltd. v. Canadian Imperial Bank of Commerce*, 2009 ONCA 764, 97 O.R. (3d) 481, at para. 69. In the circumstances of this case, the bank is not defeating or eviscerating the agreement merely by deciding after a number of years to discontinue the relationship, for its own commercial reasons.

[41] The plaintiff's Notice of Civil Claim also alleges that there is a fiduciary relationship between RCG and HSBC. This aspect of the plaintiff's claim was not pressed at the hearing of the application. The normal relationship between a bank and its customer is contractual. The customer making a deposit is a creditor to the bank, and the bank is the debtor to the customer. A fiduciary relationship arises only in special circumstances: *Crawford on Banking*, *supra*, at p. 9-94.9. The evidence presented on this application could not support a finding of a fiduciary relationship.

(vi) Estoppel

[42] RCG further argues that HSBC is estopped from closing the accounts. RCG does not point to any specific representation or promise made by HSBC at any time to support the alleged estoppel. RCG's argument is that HSBC conducted itself over the course of their relationship in such a way as to amount to a representation that it would not close the accounts without reasonable cause. The essence of this argument is simply that HSBC operated the accounts for a number of years without expressly warning RCG that it could decide to close the accounts at some point and thereby HSBC is estopped from acting otherwise.

[43] In order to establish promissory estoppel, the party relying on this doctrine must establish that the other party has, by words or conduct, made a promise or assurance which was intended to affect their legal relationship and to be acted on. Furthermore, the representee must establish that, in reliance on their representation, he or she acted on it or in some way changed his or her position: *Maracle v. Travellers Indemnity Company of Canada*, [1991] 2 S.C.R. 50 at para. 13, 80 D.L.R. (4th) 652.

[44] Regarding reliance, Mr. Ho says that RCG built its business based on his understanding that RCG's relationship with HSBC would be of indefinite duration; he says "If I had thought that HSBC could arbitrarily close our accounts, I would not have directed as many clients to HSBC". What he

would have done instead is not stated.

[45] In summary, the evidence goes no farther than showing that RCG has chosen to structure its business affairs for its own benefit in reliance on the HSBC accounts. The HSBC accounts are valuable to RCG's business. While RCG may have acted on its belief that HSBC would not close the accounts, there is no evidence of any promise or assurance on the part of HSBC upon which RCG was intended to rely. Such a promise or assurance would also be directly contrary to the written agreements governing the relationship between the parties. Accordingly, there is no basis for an argument of estoppel against HSBC.

[46] I conclude that there is no merit to the RCG's claim. It is fairly characterized as frivolous or vexatious. Thus, the application is denied on the first part of the test.

B. Where does the balance of convenience lie?

[47] In case I am wrong in my conclusion that the application should be denied on the first part of the test for an interlocutory injunction, I will go on to consider the second part of the test – balance of convenience. As noted, this requires a consideration of (i) whether one of the parties will suffer irreparable harm from granting or refusing the injunction; (ii) the strength of the applicant's case; (iii) which of the parties has acted to alter the balance of the relationship and so affected the *status quo*; (iv) factors affecting the public interest; and (v) any other factor.

(i) Irreparable Harm

[48] Irreparable harm refers to the nature of the harm suffered rather than its magnitude. There are two types of irreparable harm: first, there is harm that cannot be quantified in monetary terms, such as permanent market loss or irrevocable damage to business reputation; second, there is harm that cannot be compensated, for example, because an award of damages will not be collectible: *Onkea Interactive Ltd. v. Smith*, 2006 BCCA 521 at para. 18*,* 60 B.C.L.R. (4th) 29, citing *RJR-MacDonald*, *supra*, at 341.

[49] RCG does not argue that an award of damages would be not collectible. It argues that it will lose business and suffer damage to its reputation.

[50] Mr. Ho says that RCG would not be able to replace the business lost through other financial institutions because of the advantages that HSBC provides. He does not specifically say that the loss of business will be "permanent". RCG has provided practically no financial details. Mr. Ho vaguely says that if the HSBC accounts are closed, "I have no doubt that RCG will lose a significant number of its clients and profits in the hundreds of thousands of dollars". He does not indicate the relevant time period over which the suggested loss would be suffered. He says that RCG transacts between $300 and $400 million dollars in business through the HSBC accounts annually, and RCG

averages approximately 40 transactions per day through the HSBC accounts. Standing alone, these figures provide no meaningful information. There is no specific information as to what profits RCG earns on these transactions. There is no information as to what proportion of RCG's profits this loss would entail. There is no indication as to how much business RCG transacts elsewhere. There is no information as to its competitors or to its market share.

[51] In general, RCG has provided no information as to the proportion of its overall business that is dependent on HSBC, beyond the indication that a high proportion of its clients have their own accounts at HSBC.

[52] While I accept that Mr. Ho may be reluctant to publicly reveal confidential financial information, the fact remains that I do not have such evidence available to me.

[53] The overall picture that RCG paints is that the HSBC accounts are valuable, but not essential, to its business. The fact that the accounts are valuable to RCG must be so or it would not bother with this litigation. It clearly has concerns that it will lose business of some amount over some time frame, and that it would suffer a loss to its reputation, both with its clientele and with other financial institutions. RCG argues that if its claim were to be confined to damages, they would be very difficult and perhaps impossible to assess. I accept that damages could be difficult to assess, but not impossible. I conclude that on this application, RCG has presented a weak case for irreparable harm.

[54] The case for irreparable harm to HSBC is also not overwhelming, at least in the short term. HSBC refers to the burden of ongoing and unwanted compliance costs. It refers to unwanted regulatory and business risks, including reputational risks.

(ii) Strength of the Applicant's Case

[55] Other than perhaps its claim for reasonable notice, which is now moot, I view the case for the applicant as being without merit, for the reasons already stated.

(iii) Status Quo

[56] HSBC has acted to alter the *status quo*. However, this is not a significant factor in this case.

(iv) Factors Affecting the Public Interest

[57] RCG argues that it provides a cost-effective and valuable service to the public. I accept this; the success of its business proves it to be so. However, on the evidence, I am unable to assess the extent to which the public might be harmed by the closing of RCG's HSBC accounts.

[58] RCG suggests that banks such as HSBC are seeking to eliminate competition from money

service businesses such as RCG. It is argued that the public is harmed by the reduction in cost-effective competition to the banks in relation to foreign exchange services. If there is any validity to this contention, I consider myself ill-equipped to assess it on an application of this nature. The field of banking and financial services is highly regulated and supervised by government. In general, the question of the relationship between banks and MSBs and the effects upon the public interest should be a concern for the responsible regulators and the government.

(v) Other Factors

[59] I return to a consideration of the nature of the remedy sought – a mandatory injunction. The remedy sought is extraordinary. RCG seeks to have the court order that the bank continue its business relationship with RCG, where the bank has determined that for its own business reasons it no longer wishes to do so. In my view, the court should be very cautious about making such an order.

[60] Other courts have refused to grant interlocutory injunctions of this nature: see the Alberta Court of Queen's Bench in the *B-Filer* cases, *supra*. RCG can cite no case where such an order has been granted.

[61] In deciding the question of the balance of convenience, I am influenced by the lack of any apparent merit in the case of the applicant, as contrasted with the extraordinary nature of the remedy sought, where the case of the applicant for irreparable harm is at best weak. I, therefore, conclude that the balance of convenience is against granting the injunction sought.

V. CONCLUSION

[62] The application is denied, with costs to the respondent.

"F. Verhoeven, J."
The Honourable Mr. Justice F. Verhoeven