Citation: People Corporation v Mansbridge, 2022 MBCA 37
Date: 20220425
Docket: AI21-30-09666

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Richard J. Chartier
Mr. Justice Marc M. Monnin
Madam Justice Lori T. Spivak

B E T W E E N :

	)	***S. C. Bieber*** *and*
	)	***V. C. Wicks***
	)	*for the Appellant*
	)	
	)	***L. K. Troup*** *and*
PEOPLE CORPORATION	)	***N. A. M. Copps***
	)	*for the Respondent*
(Plaintiff) Appellant	)	*Steven Mansbridge*
	)	
- and -	)	***J. A. Baigrie***
	)	*for the Respondents*
STEVEN MANSBRIDGE, HUB	)	*HUB International*
INTERNATIONAL LIMITED, and HUB	)	*Limited and HUB*
INTERNATIONAL MANITOBA LTD.	)	*International Manitoba*
	)	*Ltd.*
(Defendants) Respondents	)	
	)	*Appeal heard and*
	)	*Decision pronounced:*
	)	***December 15, 2021***
	)	
	)	*Written reasons:*
	)	***April 25, 2022***

On appeal from 2021 MBQB 170

MONNIN JA (for the Court):

[1] This is an appeal from a dismissal of a motion for an interlocutory injunction. After hearing from all parties, we dismissed the appeal with reasons to follow. These are those reasons.

Introduction

[2] The plaintiff (People) sought an interlocutory injunction against the defendant, Steven Mansbridge (Mansbridge), its former employee, and his new employer, HUB International Limited and HUB International Manitoba Ltd. (collectively, the HUB defendants), to enforce restrictive covenants and a confidentiality clause in its employment contract with Mansbridge. The motion was dismissed.

[3] This appeal raises the issue of the standard that should be applied when considering the test set out in *RJR — MacDonald Inc v Canada (Attorney General*), [1994] 1 SCR 311, to assess the availability of an injunction. More particularly, with respect to restrictive covenants in an employer/employee relationship, on the first branch of the test should the Court consider whether the applicant has shown a strong prima facie case (as adopted by the motion judge) or need merely show a serious issue to be tried? For the reasons set out below, we are of the view that, when seeking to enforce restrictive covenants in an employment contract not involving a commercial sale of property, a "strong *prima facie* case" standard should be applied (*RJR* at p 340).

Facts

[4] People is incorporated under the laws of the province of Ontario with its head office in Winnipeg, Manitoba. It provides individual and employee group benefits, as well as various retirement, wellness and human resources products and services. From the beginning of May 2011, Mansbridge was employed as a benefits consultant and salesman for People

and a previously wholly owned subsidiary. He did so pursuant to an employment agreement which was amended from time to time.

[5] The employment agreement contained various clauses which are collectively referred to as the "post-employment obligations" of Mansbridge. More specifically, they were:

(a) a non-disclosure clause (5.03);

(b) a non-solicitation clause (5.04); and

(c) a non-acceptance clause (5.05).

The latter two clauses were to bind Mansbridge for a period of 18 months following his termination or resignation. (The full text of these clauses is reproduced in the appendix attached to these reasons.)

[6] As well, by a term of the employment agreement, Mansbridge acknowledged that the post-employment obligations were reasonable in scope, term and area; a violation of them would cause People immediate and irreparable harm; and People would be entitled to injunctive relief and an accounting of profits in the event the obligations were violated.

[7] On February 4, 2021, Mansbridge resigned by giving working notice which was to be effective as of April 5, 2021. People removed him from the premises on that day and he was not allowed to return. It is not contested that, at the time of his departure from People, Mansbridge serviced approximately 100 clients which generated an annual gross revenue for People of just over $1.8 million on a total corporate revenue of $210.8 million in 2020.

[8] People alleges that, after his departure, Mansbridge did not abide by his post-employment obligations. Specifically, as to his obligation to not use confidential information, between October 28, 2019 and December 20, 2019, Mansbridge, in a number of emails from his People account to his personal account, sent himself information, including a client list with a description of services provided and revenue associated with those clients, as well as spreadsheets concerning leads. Mansbridge admitted that the information he emailed to himself was confidential. His explanation as to why he had done so was to assist him in doing work while travelling and from home. He stated in cross-examination that he had made no use of this information since his departure.

[9] As to the non-solicitation clause, People stated that it had been advised by a client that Mansbridge had solicited them although that person did not provide an affidavit and the name of the client was never revealed. Another client provided information that they had been contacted by Mansbridge although, again, the client did not provide an affidavit, nor were they identified.

[10] Mansbridge admitted that he contacted his clients to advise them that he had left the employ of People, but not to seek their business.

[11] As to the non-acceptance of business clause, it was agreed that nine former clients of People transferred their business to the HUB defendants. The annual income to People for those nine clients was calculated to be approximately $104,000 annually.

[12] After leaving People, Mansbridge commenced working with HUB International Manitoba Ltd., a subsidiary of an American-based company,

HUB International Limited, which provides employee group benefits and consulting services in Manitoba.

Proceedings in the Court of Queen's Bench

[13] By way of statement of claim, People sought interlocutory and permanent injunctive relief against Mansbridge and the HUB defendants. More specifically, it sought an injunction restraining Mansbridge for a period of 18 months from:

(i) soliciting or accepting business from any of People's current or prospective clients;

(ii) assisting any person in soliciting or inducing any client of People to cease doing business with it; and

(iii) divulging or otherwise using proprietary and confidential information of People or any of its affiliates.

[14] On June 17, 2021, People obtained an interim injunction preventing Mansbridge from accessing and using the confidential information and from soliciting, directly or indirectly, People's clients to whom he had provided service until the hearing for the interlocutory injunction. In addition, that judge, who was not the motion judge on this appeal, ordered Mansbridge to disclose to People the names of any current clients who contacted him about transferring their business.

[15] The motion for an interlocutory injunction proceeded before the motion judge based upon the affidavit evidence of Mansbridge and a representative of People. Both were cross-examined on their affidavits.

[16] At the hearing of the motion, the motion judge, after passing comment on the evidence of People's representative as being essentially hearsay, accepted Mansbridge's evidence that he had not solicited his former clients, finding it, for the most part, uncontroverted. He applied the *RJR* test but with a higher standard on the initial branch. He agreed with the decision of Joyal J (as he then was) in *Sun Life Financial Distributors (Canada) Inc et al v Sanche et al*, 2008 MBQB 99 (*Sanche*), that, in an employment context, the enforceability of restrictive covenants must be assessed on a "strong *prima facie* case" standard as opposed to the lower threshold of a serious issue to be tried (at para 17).

[17] The motion judge was of the view that all three clauses were unreasonable and, therefore, unenforceable. As to the confidentiality clause, he considered it ambiguous and overly broad, therefore being unreasonable and unenforceable. As to the non-solicitation clause, he noted that, as it did not clearly state which clients were targeted, it was not possible for Mansbridge to know with whom he was not to conduct business. As such, the covenant was unreasonable and, therefore, unenforceable. Finally, as to the non-acceptance clause, he stated that, as it was subject to the greater obligations in the employees' wealth creation plan (an incentive plan for employees), it was therefore ambiguous. Since it was a non-competition clause and suffered from the same ambiguities and overly broad effect as did the non-solicitation clause, the motion judge considered it to be unreasonable.

[18] People argued before the motion judge that, by seeking an injunction narrower than the scope of the three covenants in the agreement, the Court was able to read down illegal provisions to make them enforceable. It argued that it was seeking a "blue-pencil" severance. The motion judge concluded

that People was, in fact, seeking a "notional severance", which was not available, and that, in any event, a more restricted "'blue-pencil' severance" was not available (at para 40).

[19] In summary, he found that People had failed to establish that it had a strong prima facie case and the motion could be dismissed on that basis. However, he went on to find that People had failed to establish that it would suffer irreparable harm not compensable in damages. He also concluded that the balance of convenience favoured Mansbridge for two primary reasons. First, his ability to work would be seriously impaired. Second, there was no evidence of actual harm being incurred by People that could not be compensable in damages. He dismissed the motion with costs.

Issues

[20] On appeal, People argues that:

(1) the motion judge erred in applying the strong prima facie test standard rather than the serious issue to be tried standard;

(2) the motion judge usurped the function of a trial judge in determining that the restrictive covenants at issue were unenforceable;

(3) the motion judge erred in law by finding that People had failed to establish irreparable harm; and

(4) the motion judge erred in finding that the balance of convenience weighed in favour of Mansbridge.

Standard of Review

[21] People argues that the standard of review with respect to the first three issues is one of correctness while the last is one of palpable and overriding error. We disagree. This Court recently considered the appropriate standard of review regarding an appeal from an interlocutory injunction order in *Interlake Reserves Tribal Council Inc et al v Government of Manitoba*, 2021 MBCA 17, and held that, as interlocutory injunctions are a discretionary, equitable remedy, the decision to grant or refuse an interlocutory injunction is entitled to a high degree of deference on appeal. An appellate court cannot substitute its own discretion for that of a motion judge but must defer to that judge's decision absent a misdirection in fact or in law or a decision that is so clearly wrong as to amount to an injustice (see para 9).

[22] If a motion judge misdirects themselves as to what the appropriate standard to be followed should be or decides an issue which should have properly been left for trial, those would be misdirections of law. However, any decision on whether irreparable harm was proven or where the balance of convenience lies is entitled to a high degree of deference.

Issues #1 and #2

[23] The test that a court must consider on an application for an interlocutory injunction is set out in *RJR*. In that case, the Supreme Court of Canada indicated that a court should weigh the following factors (see p 334):

> (a) has the plaintiff established that there is a serious question to be tried;

(b) will the plaintiff suffer irreparable harm not compensable in damages if the injunction is not granted; and

(c) which of the two parties will suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

[24] As to the first branch of the test, the Supreme Court recognized that there would be cases where a stricter standard may be required. It outlined two exceptions: one where the result of the motion would, in effect, amount to a final determination of the action; or, secondly, whether the granting or refusal of the injunction would have the practical effect of putting an end to the action because of the harm that would be caused to the losing party by the granting or refusal of the relief (see p 338). Over the years since the decision in *RJR*, when courts across the country have dealt with interlocutory injunctions in the context of employment contracts involving a restrictive covenant, there has been a recognition that such cases will usually require a stricter standard.

[25] This is the first time that this issue is squarely before this Court. The motion judge, relying on *Sanche*, used the more stringent standard of requiring a "strong *prima facie* case" (at para 17) as opposed to the lower threshold of "a serious question to be tried" (at para 15) when considering the first branch of the *RJR* test.

[26] In *Sanche*, Joyal J noted that this Court, in *Steinbach Credit Union Ltd et al v Hardman et al*, 2007 MBCA 25, had used the "lower threshold of 'serious question to be tried'" (at para 54). However, he was of the view that the issue was not squarely before the Court. In this case, People sought to rely

on *Steinbach* as being the law in Manitoba on interlocutory injunctions in an employer/employee context.

[27] The recognition of the power imbalance between an employer and employee resulting in the need for more rigorous scrutiny of restrictive covenants was reaffirmed in *Shafron v KRG Insurance Brokers (Western) Inc*, 2009 SCC 6. While that case did not deal with an injunction, the Supreme Court took the opportunity to summarize the law on restrictive covenants and noted that a power imbalance between employer and employee justifies more rigorous scrutiny. As noted by Rothstein J (at paras 22-23):

> . . . It is also accepted that there is generally an imbalance in power between employee and employer. For example, an employee may be at an economic disadvantage when litigating the reasonableness of a restrictive covenant because the employer may have access to greater resources (see, for example, *Elsley* [*Elsley v J G Collins Ins Agencies*, [1978] 2 SCR 916], at p. 924, and *Mason v. Provident Clothing and Supply Co.*, [1913] A.C. 724 (H.L.), *per* Lord Moulton, at p. 745, quoted below at para. 33).
>
> The absence of payment for goodwill as well as the generally accepted imbalance in power between employee and employer justifies more rigorous scrutiny of restrictive covenants in employment contracts compared to those in contracts for the sale of a business.
>
> [emphasis added]

[28] Rothstein J indicated that restrictive covenants are prima facie unenforceable unless they are reasonable. This prima facie unenforceability has been noted as a factor in the application of a more stringent standard in assessing the first branch of the *RJR* test in an employment context (see *Knight Archer Insurance Ltd v Dressler*, 2019 SKCA 24, where a test of a strong

prima facie case was adopted for the purposes of an injunction in a restrictive covenant case).

[29] In *Enerflex Systems Ltd v Lynn*, 2005 ABCA 62, Picard JA stated (at para 8):

> The chambers judge made no error of law in choosing and applying the strong *prima facie* case test instead of the serious issue to be tried test. For the first branch of the *tripartite* test, there is a great deal of authority for the former test in a case such as this when a restrictive covenant affecting employment is the central issue. See ***RJR*** p. 335; Robert J. Sharpe, *Injunctions and Specific Performance* (2nd ed. 1992), at pp. 2-13 - 2-20. . . .

(See also *Globex Foreign Exchange Corporation v Kelcher*, 2005 ABCA 419 at para 10, McFadyen JA; and *Dreco Energy Services Ltd v Wenzel*, 2008 ABCA 290.)

[30] While People has referred to two Manitoba trial decisions (*Carson International Inc v Biggar et al*, 2010 MBQB 198; and *Natco Manufacturers and Distributors Ltd v Topolnitsky et al*, 2011 MBQB 197) where *Steinbach* has been followed, neither of those decisions involves a written agreement containing restrictive covenants. Similarly, in *Accel Towing v Roberts et al*, 2011 MBQB 126, the trial judge quickly concluded that the test was not met as there was no binding covenant—even on a cursory examination of the facts.

[31] *Steinbach* has not been reviewed by this Court although the law has evolved since then. We are satisfied that, taking into consideration the policy reasons and pronouncements of the Supreme Court, such as *Shafron*, with respect to the requirement that restrictive covenants, in the context of an employer/employee relationship and contract, be strictly reviewed, a strong

prima facie test on the first branch of the *RJR* test is to be preferred and should be used. The motion judge did not err in law in choosing to do so in this case.

[32] We limit this application of the test to restrictive covenants, such as non-solicitation and non-competition clauses, since different considerations may apply with respect to confidentiality clauses, as will be discussed later on in these reasons.

[33] Using a strong prima facie test approach, the motion judge concluded that the first branch of the *RJR* test was not met because:

(a) the clauses in question were ambiguous, overbroad and unenforceable and, as such, they were unreasonable; and

(b) they could not be saved by severance.

People concedes that the non-acceptance clause is a non-competition clause.

[34] People's position is that the motion judge erred when he considered the ambiguity and, therefore, the reasonableness of the non-solicitation and non-competition clauses in their entirety without giving consideration to the more restricted relief being sought by People on the injunction. More particularly, it says that subclause (c) of each of those clauses, which appear to be an important part of the motion judge's concern, were not sought to be enforced. It was therefore a red herring for him to consider those clauses; rather, the motion judge should have considered only the limited relief that People was seeking, namely, enforcement of non-solicitation or acceptance of business from any of People's current or prospective clients with whom Mansbridge worked or assisting anyone else to do so.

[35] In the oft-cited decision in *Elsley v J G Collins Ins Agencies*, [1978] 2 SCR 916, Dickson J (as he then was) stressed that the test of reasonableness must be applied on a case-by-case basis: "The test of reasonableness can be applied, however, only in the peculiar circumstances of the particular case. Circumstances are of infinite variety. Other cases may help in enunciating broad general principles but are otherwise of little assistance" (at p 923).

[36] He went on to state that "[t]he validity, or otherwise, of a restrictive covenant can be determined only upon an overall assessment, of the clause, the agreement within which it is found, and all of the surrounding circumstances" (at p 924).

[37] Therefore, in assessing whether People had set out a strong prima facie case that the clauses in question were capable, at the end of the day, of being enforced, the motion judge was required to consider the clauses as they were in the agreement to assess their reasonableness. He could consider whether severance could play a role in rendering them reasonable but, as we will discuss, severance was not available.

[38] The existence of a clause in the employment contract, whereby Mansbridge acknowledges the reasonableness of the post-employment obligations, does not make it so in fact, nor bind the Court. Many restrictive covenant cases contain a similar provision and this has not prevented courts from considering, on a principled basis, the reasonableness of the impugned restrictive clauses (see, for example, *Sanche* and *Dreco*).

[39] *Shafron* noted that, for a restrictive covenant to be reasonable, it must be unambiguous. Rothstein J stated (at para 27):

> However, for a determination of reasonableness to be made, the terms of the restrictive covenant must be unambiguous. The reasonableness of a covenant cannot be determined without first establishing the meaning of the covenant. The onus is on the party seeking to enforce the restrictive covenant to show the reasonableness of its terms. An ambiguous restrictive covenant will be *prima facie* unenforceable because the party seeking enforcement will be unable to demonstrate reasonableness in the face of an ambiguity. As stated at the outset, the main difficulty that arises in this case is the ambiguity of the geographical restriction contained in the covenant. However, before turning to the case at hand, I will discuss the doctrine of severance as it applies to restrictive covenants in employment contracts.
>
> [emphasis added]

[40] He considered whether the doctrine of severance could be invoked to resolve problems. As he explained, where severance is permitted, it takes two forms: either a "'[n]otional' severance" (at para 2), which involves reading down an illegal provision in the contract that would be unenforceable in order to make it legal and enforceable, or a "'[b]lue-pencil' severance" (*ibid*), where a portion of the contract is struck out, leaving those that are not tainted by illegality.

[41] He noted that a "notional severance has no place in the construction of restrictive covenants in employment contracts" (at para 37). As to a blue-pencil severance, it was to be applied narrowly and only in particular circumstances, referring to cases where the severance was merely trivial or technical and not part of the main purpose of the clause (see para 2).

[42] We fail to see how subclause (c) in the clauses on non-solicitation and non-acceptance was not part of the purport of those clauses and would amount to merely technical and trivial removals.

[43] In our view, once it was ascertained that a strong prima facie case standard was to be applied, it was reasonable for the motion judge to consider the likelihood of success of the arguments as to the clauses' ambiguity and reasonableness. He was required to address the merits and analyze the enforceability of these clauses applying this more stringent standard. Understandably, the motion judge noted that, when one reads the clauses as to non-solicitation and non-acceptance as a whole, including the subclauses relating to "business of any nature or kind . . . similar to the People Corporation Business or any part thereof", the clauses suffer from ambiguity and, therefore, unreasonableness. In the particular circumstances of this case, he therefore concluded that People had failed to establish that it had a strong prima facie case and to meet this important threshold. It would have been preferable for the motion judge to have clearly conducted his analysis in the context of the test he was to apply. However, we are not convinced that he made a reviewable error in the manner in which he handled these decisions.

Confidentiality Clause

[44] We have left the discussion of the confidentiality clause to this stage given the particular facts of this case. The only major issue as to the confidentiality clause that was raised by People was the transfer by Mansbridge to himself of various pieces of information over a number of months before he left People. He had retained that information although he denied that he made any use of it. It had not been returned, according to his counsel on appeal, because of the uncertainty of the litigation. At the end of the appeal, we imposed a condition to the dismissal that the material be returned, unused, to People or that it be destroyed in a manner acceptable to People. Counsel for Mansbridge undertook to do so.

[45] There is no evidence that, other than that information, Mansbridge had in his possession any other confidential information or that he was using confidential information to which he was not entitled. On appeal, People raised not only the contractual obligations of confidentiality, but also the common law ability of an employer to seek to maintain the confidentiality of its proprietary information.

[46] A discussion on a confidentiality clause raises concerns which are different than non-competition and non-solicitation clauses. There are a number of cases which raise the possibility that a lower standard, namely, a substantial issue or serious question to be tried, should be used in assessing whether an interlocutory injunction should be granted for a potential breach of a confidentiality clause. In our view, this is not the case to decide that issue as it is not raised by the facts of this case and it is unlikely that it will be given the order made by this Court at the end of this appeal. For that reason, we find it unnecessary to deal with the confidentiality clause on this appeal.

Issue #3

[47] On the issue of whether People had established that it would suffer irreparable harm if the injunction was not granted, the motion judge made a few findings. He found that Mansbridge had not been soliciting People's clients or interfering in those relationships. While there was evidence of nine clients having switched from People to the HUB defendants, there was no evidence that it was as a result of a solicitation by Mansbridge. The evidence was that those clients accounted for $104,000 of revenue and he found that any other departures could be quantified as well. Therefore, the motion judge concluded that, even if he was wrong in finding that People had not met the

first branch of the *RJR* test, he still would have dismissed People's motion because it failed to establish that it would suffer irreparable harm not compensable in damages.

[48] On appeal, People argues that the motion judge erred by not recognizing that it is not merely the loss of the client, but also the ability or opportunity to cross-sell or sell further products to those clients by People which would be lost. That amount was not quantifiable. It also referred to a number of cases in which such a fact led to a conclusion that the losses were not quantifiable and, therefore, that irreparable harm would be suffered.

[49] The difficulty with People's argument is that the motion judge also made the finding that there was no evidence that anything prevented People from continuing to market its products to all of its clients, including those who had moved to other providers, nor was he satisfied upon the evidence that such losses could not be calculated. In his view, difficulties in calculating the losses were not sufficient when compared to the extraordinary relief of an interlocutory injunction.

[50] Even if there was merit to People's argument that there were other types of losses which were not the subject of quantification, we fail to see this as a misdirection by the motion judge as to the evidence. He was aware but chose not to accept the position advanced by People. This he was entitled to do and this Court cannot interfere. We would dismiss this ground of appeal as well.

Issue #4

[51] On this final ground, People argues that the balance of convenience actually favoured it rather than Mansbridge. It argues that the motion judge assessed the balance of convenience as if People was seeking to enforce the totality of the post-employment obligations which was an error. It says that, given the limited relief it was seeking, the relief would not have had the devastating impact on Mansbridge that the motion judge found. People argues that the motion judge's failure to consider the totality of the circumstances in his assessment of the balance of convenience was a palpable and overriding error.

[52] As we have stated, we are loathe to interfere in what is essentially a discretionary decision by a motion judge based upon their view of the evidence. The decision to grant or not grant an interlocutory injunction does not rest on one factor alone, but on a consideration of all three branches of the test, although the failure to meet one might, in appropriate circumstances, be considered sufficient to defeat the request. We agree that the motion judge's comments on the balance of convenience are not very elaborate. However, he was entitled to conclude that there was no evidence of actual harm being suffered by People that could not be compensated in damages. For the reasons set out previously, that was a conclusion he could reach for which this Court cannot, and should not, interfere.

[53] His conclusion that the granting of the injunction would have a serious impact on the ability of Mansbridge to work in the industry is also a conclusion which he could draw based on the information before him. Even if People's limited injunction was successful, Mansbridge would be unable to

accept business from a large number of previous clients. These were all considerations that the motion judge could use in reaching his conclusion on balance of convenience. It is not a matter which warrants appellate interference on this ground alone.

Conclusion

[54] We therefore dismissed the appeal. There will be one set of costs in favour of Mansbridge and one set of costs in favour of the HUB defendants.

Monnin JA

Chartier CJM

Spivak JA

APPENDIX

ADVISOR EMPLOYMENT AGREEMENT

. . .

5.03 **Confidentiality** The Employee covenants and agrees that during the Employee's engagement by the Employer and at all times thereafter, the Employee shall:

(a) regard and preserve as confidential all Confidential Information that has been obtained by or on behalf of the Employee in the course of the Employee's employment with the Employer, whether the Employee possesses such information within the Employee's memory or in writing or in some other physical form;

(b) refrain from, directly or indirectly, utilizing, disclosing, divulging or disseminating to any Person any Confidential Information, except as required by law; and

(c) not, without prior written authorization from the Employer, use for the Employee's own benefit or purposes, or for the benefit or purposes of any third party, any Confidential Information.

5.04 **Non-Solicitation** Subject to the greater obligations to which the Employee may be subject pursuant to the Employee's participation in the Wealth Creation Plan, the Employee covenants and agrees that the Employee shall not at any time during the Employee's employment with the Employer, or at any time during the 18 months immediately following the later of the Effective Date of Termination and, if applicable, the last day of the Employee Notice Period or the Employer Notice Period, as applicable, directly or indirectly through any other Person, without the prior written consent of the Employer:

(a) approach, solicit, or attempt to direct away from the Employer or any member of the People Corporation Group any Client or Prospective Client with whom the Employee communicated for business purposes during the employment of the Employee by the Employer, on the

Employee's own behalf or on behalf of any other Person, with respect to business of any nature or kind which is the same as or similar to the People Corporation Business or any part thereof;

(b) approach, solicit, or attempt to direct away from the Employer or any member of the People Corporation Group any Client or Prospective Client of whom the Employee became aware in the course of the Employee's employment by the Employer, on the Employee's own behalf or on behalf of any other Person, with respect to business of any nature or kind which is the same as or similar to the People Corporation Business or any part thereof;

(c) solicit from a Client or Prospective Client or attempt to direct away from the Employer any business of any nature or kind similar to the People Corporation Business or any part thereof;

(d) induce or attempt to induce:

(i) any individuals employed or otherwise engaged by any members of the People Corporation Group to terminate their employment or engagement with such entity; or

(ii) any independent contractor, recruitment agency or other sub-contractor or agent of the Employer to terminate their contract, association or sub-contract with the Employer; or

(iii) any individual placed in a position with a Client by or through the services or referral of any member of the People Corporation Group, to terminate the Employee's employment or engagement with such Client; or

(e) solicit, employ or utilize, in any manner whatsoever, the services of any of the individuals employed or otherwise engaged by any members of the People Corporation Group, or the services of any independent contractor of, a recruitment agency associated with, or sub-contractor or agent of, any member of the People Corporation Group.

5.05 **Non-Acceptance** Subject to the greater obligations to which the Employee may be subject pursuant to the Employee's participation in the Wealth Creation Plan, the Employee covenants and agrees that the Employee shall not, at any time during the Employee's employment with the Employer, or at any time during the 18 months immediately following the later of the Effective Date of Termination and, if applicable, the last day of the Employer Notice Period or Employee Notice Period, as applicable, directly or indirectly through any other Person, without the prior written consent of the Employer:

(a) serve, cater to or accept business from any Client or Prospective Client with whom the Employee communicated for business purposes during the employment of the Employee by the Employer, on the Employee's own behalf or on behalf of any other Person, with respect to business of any nature or kind which is the same as or similar to the People Corporation Business or any part thereof;

(b) serve, cater to or accept business from any Client or Prospective Client of whom the Employee became aware in the course of the Employee's employment by the Employer, on the Employee's own behalf or on behalf of any other Person, with respect to business of any nature or kind which is the same as or similar to the People Corporation Business or any part thereof; or

(c) accept from a Client or Prospective Client any business of any nature or kind similar to the People Corporation Business or any part thereof;

. . .