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## Injunction Not Granted for Breach of Non-Solicitation Clause

The British Columbia Court of Appeal overturned a lower court judgement granting an interlocutory injunction for violation of a non-solicitation clause by a former employee in *Edward Jones v. Voldeng*, 2012 BCCA 295.

Mr. Voldeng was an investment advisor with Edward Jones for approximately 10 years. He had a six month non-solicitation clause in his employment agreement. Mr. Voldeng and his assistant left Edward Jones to work for RBC and prior to departing either Mr. Voldeng or his assistant made copies of client records. Once at RBC Mr. Voldeng solicited his former clients in breach of his non-solicitation agreement resulting in approximately \$20.2 million in clients' funds being transferred to RBC.

The lower court ordered that Mr. Voldeng refrain from soliciting the clients of Edward Jones for a six month period and avoid initiating any contact with those clients. In addition Mr. Voldeng and his assistant were restrained from using the confidential information of Edward Jones and were ordered to return all confidential information to Edward Jones.

The Court of Appeal overturned the lower court with respect to the solicitation and contact with former clients. The Court held that irreparable harm is required in order to grant an interlocutory injunction and such harm could not be established where damages were calculable. Although Edward Jones had argued that the magnitude of the loss of \$20.2 million equalled irreparable harm, the court disagreed. According to the court, irreparable harm refers to the nature of the harm not the magnitude. If the applicant could show that its business potentially would be destroyed by the conduct of the defendant, then it would be open to argue irreparable harm. Given that Edward Jones operates in locations across Canada and in other locations near the office in question, it was not at risk of having its business destroyed by the conduct of Mr. Voldeng. As a result, only the orders with respect to the use and return of confidential information were upheld.

This case establishes a precedent that will make it more difficult for employers to obtain interlocutory injunctions for breach of non-solicitation agreements, particularly for larger organizations with multiple locations.

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