CITATION: Paul Boileau v BakeMark Ingredients Canada Limited, 2026 ONSC 888
COURT FILE NO.: CV-25-00098760-0000
DATE:2026-02-12

RE: Paul Boileau , Plaintiff

AND

BakeMark Ingredients Canada Limited, Defendant

BEFORE: Associate Justice Perron

COUNSEL: Andrew Lister for the Plaintiff

John Schudlo and Emma Hamer for the Defendants

HEARD: October 14th 2025

ENDORSEMENT

1. This is a wrongful dismissal action.

2. Mr. Boileau is 57 years old and currently resides in Alberta.

3. At the time of his employment with BakeMark, Mr. Boileau resided in British Columbia and worked as the General Manager of the British Columbia warehouse. The staff that Mr. Boileau managed also worked in British Columbia.

4. Mr. Boileau's employment was terminated on June 26, 2024.

5. Mr. Boileau's contract of employment includes the following clause:

> 10.2 This Agreement will in all respects be governed and construed in accordance with the laws of the Province of Ontario. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Province of Ontario.

6. On February 12, 2025, Mr. Boileau commenced this action in Ottawa, Ontario.

7. On April 11, 2025, BakeMark took the position that British Columbia was the more appropriate forum for this action. Shortly thereafter, BakeMark brought this motion seeking to stay or dismiss the action on the basis of *forum non conveniens*.

8. Mr. Boileau's position is that the action was properly commenced in Ontario and should continue in Ontario.

What is the Test applicable to the Dispute over Jurisdiction?

9. The first issue that I must determine on this motion is the legal framework that applies to the dispute over jurisdiction.

10. BakeMark does not dispute that Ontario has *jurisdiction simpliciter* (*Club Resorts Ltd*. v *Van Breda*, 2012 SCC 17 at paras 69 and 101-103). I therefore do not need to determine that issue.

11. However, the parties disagree on the analysis that the Court must undertake to determine whether the Court should exercise jurisdiction. BakeMark's position is that the *forum non conveniens* analysis applies. Mr. Boileau submits that the applicable test is the *strong cause* test.

12. Each party relies on caselaw from the Supreme Court of Canada and other appellate courts in support of their position. During the motion, each party provided various reasons on why their caselaw applied and should be preferred. That said, the parties recognized that the two lines of cases do not expressly distinguish or contradict each other.

13. I have carefully reviewed the body of caselaw relied upon by each party.

14. For Mr. Boileau, the caselaw included: *Expedition Helicopters Inc*. v *Honeywell Inc*. (2010 ONCA 351), *Z.I. Pompey Industrie* v *EDU-Line N.V*. (2003 SCC 27), *Forbes Energy Group Inc*. v *Parsian Energy Rad Gas* (2019 ONCA 372) and *Mackie Research Capital*

Corporation v *Mackie* (2012 ONSC 3890).

15. The line of cases relied upon by BakeMark included: *Club Resorts Ltd*. v *Van Breda* (2012 SCC 17), *Momentous Corporation* v *Canadian American Association of Professional Baseball Ltd*. (2010 ONCA 722) and *Hydro Aluminium Rolled Products GmbH* v *MFC Bancorp Ltd*. (2020 BCCA 295).

16. BakeMark acknowledges that there may historically have been some uncertainty about which test applies when the applicable contract includes a non-exclusive forum selection clause, but that any debate was recently resolved by the Ontario Court of Appeal in *Shirodkar* v *Coinbase Global, Inc*. (2025 ONCA 298) which held that the *forum non conveniens* test applies.

17. I agree with BakeMark that the applicable test is *forum non conveniens*.

18. First, the plain and ordinary meaning of the express language used in section 10.2 is that the selection clause is non-exclusive (see *Savanta* v *Hilditch*, 2022 ONSC 1384 at para 10).

19. Second, I disagree with Mr. Boileau that the exclusive vs non-exclusive nature of the forum selection clause is not material. Based on my review of the caselaw, the characterization of the clause as "exclusive" or "non-exclusive" is a driving factor in determining which test applies.

20. In my view, the significance of the exclusive nature of the clause is highlighted in the *Expedition Helicopters* case which is relied upon by Mr. Boileau.

21. At paragraphs 9 and 10 of *Expedition Helicopters*, the Court of Appeal discusses the application of the Supreme Court of Canada's decision in *Pompey*. In particular, the Court of Appeal reiterated that in rejecting a unified approach to *forum non conveniens* in favour of the *strong cause* test, Justice Bastarache adopted the view of E. Peel in "Exclusive jurisdiction agreements: purity and pragmatism in the conflict of laws" [emphasis added].

Justice Bastarache found that there were important policy reasons, including promoting contractual certainty, to hold parties to their bargain and give "full weight" to the jurisdiction clause. From my review of these passages, it is apparent that this analysis applies when the forum selection clause is "exclusive".

22. In relying on *Pompey*, the Court of Appeal in *Expedition Helicopters* applied the strong cause test. The forum clause at issue in *Expedition Helicopters* was "exclusive". *Expedition Helicopters* was also a commercial case.

23. The strong cause test was also applied by the Supreme Court of Canada in the *Douez* case (2017 SCC 33), subject to a modified approach to reflect specific considerations applicable to the consumer context. Again, based on my review of the *Douez* case, particularly at paragraphs 18 to 38, the Supreme Court appears to be emphasizing that contracts with an exclusive forum selection clause warrant a different test such that a party seeking to displace the forum selected by the parties must show *strong cause* for the matter to be determined elsewhere.

24. Mr. Boileau relies on the *Forbes* and the *Mackie* decisions to support that the Court has consistently held that when a plaintiff sues in the forum selected in the contract, whether exclusive or non-exclusive, the forum selection clause should be enforced unless the defendant can show *strong cause* to override it. *Mackie* is a decision from the Ontario Superior Court of Justice from 2012. *Forbes* is a decision from the Court of Appeal from 2019.

25. I do not agree with the conclusions drawn by Mr. Boileau. On my review of *Forbes*, the determining factor for the Court of appeal was whether the forum selection clause was "exclusive" or "non-exclusive".

26. At paragraph 5 of *Forbes*, the Court held that the parties had agreed that the *strong cause* test only applied to forum selection clauses that granted "exclusive" jurisdiction. At issue on appeal was whether the motion judge had made a finding on whether the clause was "exclusive" or not.

27. At paragraph 6, the Court goes on to state that they were not persuaded that the language in the clause at issue was an "exclusive jurisdiction" clause. In other words, the Court found that the clause in question was "non-exclusive".

28. The Court of Appeal therefore concludes, at paragraph 7, that the Court should conduct a *forum non conveniens* analysis.

29. To the extent there is any ambiguity in the law on whether the "exclusive" nature of the forum selection clause is relevant in determining which test applies, this was clarified by the Court of Appeal in *Shirodkar* where the Court relied on its previous decision in *Forbes* to hold that: "[…] the choice of forum clause in the [agreement] is non-exclusive, and the strong cause test does not apply" (see *Shirodkar* at para 38). The Court contrasted this result with the outcome of its previous decision, in *Momentous Corporation* v. *Canadian American Association of Professional Baseball Ltd.* (2010 ONCA 722 at para 39) where the parties were required to show *strong cause* to rebut the applicability of the "exclusive" forum selection clause.

30. The British Columbia Court of Appeal also reached the same conclusion in *Hydro Aluminium Rolled Products GmbH* v. *MFC Bancorp Ltd.*(2020 BCCA 295 at para 23):

> That [strong clause] common law test applies to contracts with *exclusive* forum selection clauses, but the clause in the Guarantee is not of that kind. It is, rather, a *non-exclusive* forum selection clause. Non-exclusive forum selection clauses lack "the force and clarity required to engage the rule" that a party must show strong cause to override the forum the parties contracted to use.

31. In summary, because the forum selection clause in the contract between Mr. Boileau and BakeMark provides that Ontario is the non-exclusive forum, I conclude that the *forum non conveniens* analysis is the governing test.

Forum Non Conveniens

32. When a defendant invokes *forum non conveniens*, the defendant bears the burden of showing why the Court chosen by the plaintiff should decline to exercise its jurisdiction. The standard to displace the plaintiff's chosen jurisdiction is high. The defendant must establish that another forum is clearly more appropriate. (see *Club Resorts* at para 103; Sinclair v Venezia Turismo, 2025 SCC 27 at para 49; *Young* v *Tyco International of Canada Ltd.* 2008 ONCA 709 at para 28).

33. Various factors have been cited in the caselaw to assist the Court in exercising its discretion pursuant to the *forum non conveniens* analysis (see *Club Resorts* at para 105; *Young* at para 26). The factors are to be assessed holistically but unless the balance strongly favours another forum, the Court must accept jurisdiction (see *Sinclair* at paras 49-50; see *Tyco* at paras 27-31).

34. My determination on each of the applicable factors is below.

Location of parties:

35. Mr. Boileau resides in Alberta. He moved to Alberta after his employment with BakeMark was terminated.

36. BakeMark has a facility in Richmond, British Columbia which occupies a local branch (where Mr. Boileau worked) and its head office. Its registered office is in Vancouver, British Columbia. However, BakeMark also has operations in Ontario, Quebec, Alberta and Manitoba.

37. This factor slightly favours British Columbia.

Location of witnesses and of the evidence:

38. Mr. Boileau's former supervisor resides in Montreal, but his position is "tethered" to

BakeMark's head office in British Columbia and he is required to work there one week a month.

39. According to Mr. Boileau, other relevant BakeMark personnel/witnesses are either in Montreal or the United States. He also submits that any evidence is likely to be digital and the location of the evidence would therefore be a neutral factor.

40. BakeMark intends to call 8 witnesses at trial. Based on the affidavit of David Bregani, which includes hearsay evidence, his "understanding" is that 6 of the witnesses work at the British Columbia facility, or travel there regularly (Mr. Letourneau). According to BakeMark, these 6 witnesses are key witnesses who will testify about alleged harassment/bullying which led to Mr. Boileau's dismissal. BakeMark's evidence is that Mr. Boileau physical employment file and any relevant documents are located in British Columbia.

41. Mr. Boileau disputes that the 6 witnesses are key witnesses. He denies any allegations of harassment or bullying and submits that there is no evidence he was terminated due to harassment. This allegation appears to have been raised for the first time by BakeMark on this motion. Mr. Boileau's evidence is that there was no disciplinary action against him before his termination and he suspects that he was terminated due to his age and/or a disagreement with his supervisor, Ron Letourneau.

42. Mr. Boileau also submits that for large corporations with a widespread footprint, travel is expected for witnesses and this factor ought not be given a lot of weight or should be a neutral factor (*Young* at paras 50-53).

43. Mr. Boileau was terminated without cause, but neither party made submissions during the motion on how this might affect whether the 6 witnesses were key witnesses.

44. It is not appropriate for me at this motion to make any determinations of fact on the allegations of harassment, or whether those allegations are material issues of law in the action (*Young*, at paras 31 and 32).

45. Mr. Boileau stated that although he would need to travel for any in-person attendances, Ontario is more convenient for him. It is not clear who else Mr. Boileau proposes as witnesses other than himself, but this appears to include Ms. Taylor (who is based in California) and Mr. Letourneau and other human resource personnel (based in Montreal).

46. If I fully accept Mr. Boileau's evidence regarding material witnesses, what is clear is that none of the potential witnesses reside in Ontario. There will therefore be some travel costs for all witnesses for any testimony that needs to occur in person if the matter proceeds in Ontario. That said, I accept that travel to Ontario will be more convenient for Mr. Boileau and also agree that this location may be more convenient for witnesses who reside in Montreal.

47. If I consider BakeMark's evidence, some of the potential witnesses appear to be located in British Columbia. However, it appears that travel would be required for two of its intended witnesses even if the action is held in British Columbia.

48. The location of physical evidence does not appear to be a significant issue, because any documents can be produced digitally.

49. Overall, the location of witnesses/evidence slightly favours British Columbia.

The jurisdiction in which the factual matters arose and where the events took place:

50. It is undisputed that Mr. Boileau worked in British Columbia. He was the General Manager and was responsible for overseeing BakeMark's operations in British Columbia. He supervised a team of 35 staff members who worked in British Columbia.

51. Where the contract was formed is not clear based on the evidence on this motion. BakeMark's evidence is that Mr. Boileau signed the employment agreement in British Columbia. Mr. Boileau's evidence is that he received the employment contract from BakeMark's Vice-President who spent a significant amount of time in Ontario.

52. Mr. Boileau received his termination letter in British Columbia but it was issued from someone who is based in California. The evidence is not clear on who made the decision to terminate him.

53. Notwithstanding the ambiguity surrounding where the contract may have been formed and who terminated him (or why), there is no evidence suggesting that any of the factual matters in issue took place in Ontario. There is unequivocal evidence that Mr. Boileau carried out his employment in British Columbia.

54. This factor weighs in favour of British Columbia.

The impact or cost of transferring or of declining the stay:

55. Mr. Boileau's evidence is that there would be some costs and duplication for him to retain new counsel and travel if the action was transferred or recommenced in British Columbia. Although he will need to travel irrespective of where the action proceeds, he states that he regularly visits Ontario and most of his family lives there. It would therefore be more efficient and convenient for him to maintain the action in Ontario.

56. Mr. Boileau also submits that the Court should consider the fact that he is an individual plaintiff, and that BakeMark is a large corporation with a broad geographical footprint.

57. BakeMark's evidence is that it would be costly for it to defend the action in Ottawa because the trial would be presumptively held in person according to the current practice directions. It estimates that the cost of travel for the 6 potential witnesses who reside in British Columbia would be approximately $7,000 and that there would be a loss of productivity of its plant operations in British Columbia associated with the travel/testimony of the witnesses.

58. The reality of this action is that there will be some travel for some of the witnesses and the parties regardless of whether the action unfolds in Ontario or British Columbia.

59. I also note that some of the travel costs could be mitigated because many interlocutory steps are held virtually, and the remote testimony of witnesses during trial is now a regular occurrence.

60. There are also further economies and efficiencies to be gained from the fact that in Ontario, this is an action under the Simplified Procedure rule which limits oral discovery and provides for summary trials, including adducing evidence by way of affidavit.

61. The action is at an early stage, and although the cost of recommencing the claim in British Columbia may be modest for BakeMark, this factor favours maintaining the action in Ontario to be as efficient and cost-effective as possible, particularly because this is an action commenced by an individual plaintiff under the Simplified Rule.

Avoiding multiplicity and the possibility of conflicting judgments:

62. Only one action has been commenced with respect to this matter. Maintaining Ontario's jurisdiction will not create a risk of duplicative litigation or inconsistent judgments.

63. This factor is in favour of maintaining Ontario's jurisdiction (*Beaule* v *Manufacturers Life Insurance Company*, 2021 ONSC 1876 at paras 35-37).

The applicable law of the contract:

64. Although BakeMark takes issue with the jurisdiction provision set out in section 10.2, BakeMark does not dispute that Ontario law governs the contract. It is therefore undisputed that Ontario law applies to this matter.

65. BakeMark submits that this factor should not be given any weight because the Courts in

British Columbia have "little difficulty" interpreting Ontario law (*Dollinger* v *Starke*, 2020 BCSC 1574 at para 44).

66. The facts in *Dollinger* are distinguishable. In *Dollinger*, there was no choice of forum clause. The choice of law clause provided that the agreement was "governed where applicable by federal Canadian law and provincial laws of Ontario, Canada". The plaintiff commenced the action in British Columbia and the defendant argued that this factor weighed heavily in favour of British Columbia being *forum non conveniens*.

67. In the present matter, Mr. Boileau commenced the action in Ontario and the parties expressly chose Ontario law as the governing law over their contract.

68. Without questioning the competency of the Courts in British Columbia to apply Ontario law, it would certainly be more practical and convenient for an Ontario Court to interpret and apply Ontario laws.

69. This factors favours Ontario.

The loss of a juridical advantage:

70. Mr. Boileau's position is that he would be significantly prejudiced if the matter was transferred to British Columbia. In essence, Mr. Boileau submits that British Columbia is more deferential to employers, and Ontario is more likely to find that the termination clause in the contract is unenforceable pursuant to Ontario legislation. Mr. Boileau also submits that BakeMark is forum shopping to try and uphold the termination clause. Mr. Boileau therefore submits that there are important access to justice issues which strongly weigh in favour of maintaining the action in Ontario (*Young* at para 61).

71. BakeMark's position is that this factor should not be given a lot of weight because it involves problematic issues questioning the principle of comity within Canada's legal system (*Yip* v *HSBC Holdings plc*, 2017 ONSC 5332 at paras 234-237).

72. It would not be appropriate for me to make any comments, let alone any findings, as to whether British Columbia or Ontario Courts favour employers or employees. In addition, the fact that BakeMark concedes that Ontario law applies to the contract seems to neutralize any allegation that it is forum shopping by trying to have this matter heard in British Columbia. BakeMark's agreement that Ontario law applies also negates Mr. Boileau's allegations that he will lose a juridical advantage if the action proceeds in British Columbia.

73. That said, there may be some procedural nuances as between the two jurisdictions. For example, the parties discussed the procedural differences in British Columbia and Ontario regarding mediation, which is mandatory in all actions commenced in Ottawa. I have already discussed the efficiencies sought to be achieved by the Simplified Rule which presently governs this action.

74. This factor is therefore neutral or slightly favours Ontario to ensure that Ontario laws and procedures apply to the action, consistent with the parties' choice of governing law.

Choice of forum clause:

75. As discussed above, Mr. Boileau submits that because he seeks to enforce the non-exclusive forum selection clause, the *strong cause* test applies. Pursuant to the *strong* cause test, Mr. Boileau submits that it was not enough for BakeMark to show that British Columbia was the more convenient forum, but that BakeMark needed to show strong cause to override the parties' agreement.

76. I have already found that the *strong cause* test does not apply because the forum selection clause was non-exclusive. However, even pursuant to the *forum non conveniens* analysis, Mr. Boileau's position is that the forum selection clause is central to the analysis and

carries significant weight. He submits that the Court should give effect to the clause unless exceptional circumstances exist such as fraud, inducement, unenforceability or public policy (*Expedition Helicopters* at para 24).

77. BakeMark's evidence is that it was likely an error to include "Ontario" as the non-exclusive jurisdiction because it is not BakeMark's practice to include a forum selection clause to non-local jurisdictions.

78. BakeMark's evidence on the "mistake" is introduced by hearsay. It is also speculative. I place no probative value on this evidence. The parties chose Ontario as the non-exclusive forum to determine their dispute. That choice is also perfectly consistent with the parties' choice of Ontario for the governing law, which is not in dispute on this motion.

79. The weight to be given to a choice of forum clause as part of the *forum non conveniens* analysis was discussed by Justice Brown in *Sugar* v *Megawheels Technologies Inc.*(2006 CanLII 37880 at paras 18 to 29). That case was cited by BakeMark to support its position that BakeMark was located in British Columbia, but I found it helpful to review Justice Brown's analysis on the forum clause.

80. In *Sugar*, the plaintiff commenced the action in Ontario but the agreement provided that the purchaser (the plaintiff) irrevocably attorned to the non-exclusive jurisdiction of Alberta. Justice Brown ultimately dismissed the defendant's *forum non conveniens* motion and found that the parties had not drafted the forum clause in such a way to give the clause determinative weight because it left the purchaser free to start an action before another competent Court. Justice Brown also found that the clause was drafted in such a way that would have required the purchaser to attorn to a suit if brought in Alberta.

81. In the present case, section 10.2 states that "each party" irrevocably attorns to the non-exclusive jurisdiction of Ontario Courts. As was the case in *Sugar*, I find that the parties did not draft the clause in such a way to give it determinative weight because the clause is "non-exclusive".

82. However, because the clause provides that each party would attorn to the jurisdiction of

Ontario, and Mr. Boileau has commenced the action in Ontario, I find that this factor favours maintaining the action in Ontario.

Conclusion

83. The Court of Appeal has stated that three principles should guide the exercise of my discretion on a *forum non conveniens* motion. The standard to displace the plaintiff's chosen jurisdiction is high. I must balance the relevant factors to achieve the twin goals of efficiency and justice. I should also adopt a prudential approach to any fact finding. (*Young*, at paras 28 to 31)

84. On analysis of each of the factors, most of the factors only slightly leaned in favour of one jurisdiction over the other. The factor that strongly weighs in favour of British Columbia is the location where the events took place. The factors that weigh heavily in favour of keeping this matter in Ontario is the clear choice of law made by the parties as well as the fact that Mr. Boileau commenced the action in the forum contemplated by the selection clause in the contract, notwithstanding that it was non-exclusive.

85. When I consider the factors overall, I am not convinced that British Columbia is clearly a more appropriate forum for this dispute than Ontario.

86. I therefore dismiss BakeMark's motion.

Costs of the Motion

87. Each party uploaded a costs outline or bill of costs in the event they were successful on the motion.

88. The costs sought by BakeMark, on a partial indemnity basis, were $57,725.26. BakeMark submits that a lot of research was required due to the complexity of the jurisdictional issue.

It also relies on a "with prejudice" email dated April 4, 2025 whereby it proposed that Mr. Boileau discontinue his Ontario action and file it in British Columbia.

89. The costs sought by Mr. Boileau if successful come to $6,027.60 on a partial indemnity basis. Mr. Boileau agrees that the issues were complicated but relies on an offer to settle made on October 3, 2025 to dismiss the motion with costs payable by BakeMark in the amount of $5,000. On the basis of the offer, Mr. Boileau submits he should get his costs on a substantial indemnity basis in the amount of $9,041.40.

90. Mr. Boileau was entirely successful in the action. Notwithstanding the complexity of the legal issues, the costs sought by BakeMark had it been successful on this motion are not proportionate to the fact that this is a Simplified Rule action where the damages claimed are less than $200,000.

91. Although Mr. Boileau "beat" his offer, the offer was made at a point in time where both parties would have incurred the bulk of costs to prepare the materials, including the research that was required. I also see no basis for awarding substantial indemnity costs which are awarded only in exceptional circumstances.

92. Mr. Boileau shall therefore have his costs on a partial indemnity basis as claimed in the amount of $6,027.60 payable by BakeMark within 30 days.

93. The motion is dismissed with costs payable to Mr. Boileau.

Date: February 12, 2026

Associate Justice Perron