

CITATION: Night Hawk Technologies TM Inc. et al. v. Indigenous Relations and Northern Affairs Canada, 2024 ONSC 3114
COURT FILE NO.: CV-21-00088216-0000
DATE: May 31, 2024

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: NIGHT HAWK TECHNOLOGIES TM INC., also operating as AHJIGO, GUILLAUME CARLE AND LYNN HOLLISTER, Plaintiffs

AND:

INDIGENOUS RELATIONS AND NORTHERN AFFAIRS CANADA, Defendant

BEFORE: Associate Justice M. Fortier

COUNSEL: Guillaume Carle and Lynn Hollister, for the Plaintiffs
Nathan Joyal, for the Defendant

HEARD: January 18, 2024

REASONS FOR DECISION

Overview

[1] The plaintiff corporation, Night Hawk Technologies TM Inc. (“Night Hawk”), brings this motion pursuant to r. 15.01(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (“*Rules*”), for an order granting the plaintiffs Guillaume Carle and Lynn Hollister leave to represent it in this action. The defendant opposes the motion.

[2] The plaintiffs also seek an order amending the statement of claim to add the Attorney General of Canada as a defendant to the action. I will deal with that matter first.

Amendment of the Statement of Claim

[3] Early in the litigation, counsel for the defendant indicated to the plaintiffs that the defendant was improperly named, and the Attorney General of Canada is the properly named defendant pursuant to s. 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 (“*CLPA*”).

[4] Section 23(1) of the *CLPA* provides that “[p]roceedings against the Crown may be taken in the name of the Attorney General of Canada or, in the case of an agency of the Crown against

which proceedings are by an Act of Parliament authorized to be taken in the name of the agency, in the name of that agency.”

[5] It would appear that the plaintiffs intended to name “Crown-Indigenous Relations and Northern Affairs Canada”, as the defendant, which is a federal government department and not capable of being sued. Accordingly, pursuant to s. 23(1) of the *CLPA*, these proceedings against the Crown should be taken in the name of the Attorney General of Canada.

[6] Although the plaintiffs sought to add the Attorney General of Canada as a defendant, they do not oppose the amendment of the statement of claim to remove Indigenous Relations and Northern Affairs Canada as the defendant in the action and replace it with the “Attorney General of Canada”. The defendant will therefore be referred to as the Attorney General of Canada (the “AGC”) throughout this decision.

Background

[7] In this action, commenced on January 4, 2022, the plaintiffs claim over \$2.5 million in damages in relation to a decision by Indigenous Services Canada to remove the corporate plaintiff from the Indigenous Business Directory.

[8] The statement of claim was served on the AGC in January 2022 and the litigation has been at a standstill since that time. The AGC has yet to serve and file a statement of defence.

[9] The plaintiffs’ motion is supported by the four-paragraph affidavit of Lynn Hollister dated August 17, 2023 and a letter from AGC counsel attached as an exhibit. Paragraphs 1 to 4 of the affidavit read as follows:

1. Both Guillaume Carle and I are officers and directors of the Plaintiff
2. We consent to the Plaintiff corporation, Night Hawk Technologies TM Inc. acting on its own behalf as a self-represented entity.
3. As officers and directors we are capable of acting for the corporate Plaintiff in that we have been involved in other Court proceedings in the past.
4. Further to a letter received from the Department of Justice, dated March 8, 2022, attached as Exhibit A, the Plaintiffs seek to amend the Statement of Claim to add “The Attorney General of Canada” as a Defendant, on consent.

[10] The AGC's responding materials include the affidavit of Nada Shouman, a legal assistant in the Department of Justice, dated January 11, 2024, attaching several exhibits and a factum. The exhibits include communications between the plaintiffs, the defendant and Richard Jackman, two Quebec Superior Court decisions, and media articles.

[11] Although the action has not moved beyond service of the statement of claim, there have been a number of email exchanges between the parties since the service of the claim. These exchanges include information and discussions about the requirement for the plaintiffs to bring a motion for leave for Night Hawk to be represented by Ms. Hollister and Mr. Carle and the plaintiffs' request for the AGC to consent to that relief. As explained by the AGC to the plaintiffs, the decision to grant leave for the corporation to proceed without being represented by a lawyer is solely the court's decision.

[12] Ms. Hollister and Mr. Carle maintained in their emails to the AGC that their real objective, along with that of the corporate plaintiff, was to mediate the issues before proceeding with the litigation. To that end, Ms. Hollister and Mr. Carle advised the AGC in December 2022 that they had retained the services of Neutral Corner Solutions and Richard Jackman to act as a facilitator for all three plaintiffs in this matter. Mr. Jackman confirmed in an email to the AGC that he is a facilitator and wished to discuss the creation of a formal mediation process.

[13] Following an exchange of emails between the AGC and Mr. Jackman, on August 30, 2023, the AGC sought to clarify Mr. Jackman's continuing role in the action. Particularly, it had come to the AGC's attention that Mr. Jackman may be a lawyer suspended by the Law Society of Ontario and, at the time, Mr. Jackman was attempting to schedule the motion for leave for Ms. Hollister and Mr. Carle to act on behalf of Night Hawk. On September 3, 2023, Mr. Jackman replied to the AGC's query as follows:

Several points to take note of.

In 1985 I stopped paying fees to the 'Society' as it was evident to me they were "only in it for the money". I won't share that story. I had joined the Federal Government as an advisor/administrator. I actually worked at Justice for one year.... The Dispute Resolution Project.

As of that moment I was no longer a 'Licensee'. I walked away.

As it turns out they (The Society) created their own "fake" designation of suspension. That is a fabrication/ fiction in order to follow folks like me.

I created my Facilitation organization in 1992.....Neutral Corner Solutions. The website is neutralcornersolutions.com.

As a consequence of their questionable activity around this issue I am prepared to take this to Court: think of Jordan Peterson. Same issues unfolding. I've had dinner with him once.

I am a Facilitator and have never represented myself as anything else since 1985. Check out the definition. Jesus was a facilitator.

Within the last 6 months I was required to talk Mr. Carle out of committing suicide. Thank goodness I/we succeeded. Sounds like what a lawyer does?? Not.

The Society is 'Gaslighting' me. Its that simple.

I think you are better than this dialogue.

Richard [Emphasis in original.]

[14] Mr. Jackson, on behalf of the plaintiffs, attempted unsuccessfully to have this motion heard on September 7, 2023, November 10, 2023, and December 7, 2023.

[15] The AGC opposes the motion for an order granting leave for Mr. Carle and Ms. Hollister to represent the corporate plaintiff arguing the following:

- The motion does not address the required legal test for leave;
- Mr. Carle and Ms. Hollister have failed to establish any factors weighing in favour of the granting of an exception to r. 15.01(2); and
- Mr. Carle and Ms. Hollister have provided no evidence that they are reasonably capable of comprehending the issues and articulating the case on behalf of the plaintiff corporation.

[16] In his submissions to the court, Mr. Carle stated that the corporation mandated him and Ms. Hollister to represent it in these proceedings but conceded that there is no documentary evidence to that effect. Mr. Carle indicated that he was not aware that any documents would be required for the motion and furthermore, any such documents belonged to the corporation.

[17] Mr. Carle maintained that the plaintiffs did not submit much paperwork because they are "not there yet" and explained that the priority was to try to settle the matter with the AGC before retaining a lawyer and proceeding further with the litigation. Mr. Carle indicated that if the AGC is not interested in resolving the matter, they would likely retain a lawyer to represent the corporation.

[18] With respect to Mr. Jackman's involvement, Mr. Carle indicated that he was simply someone who is helping them, making photocopies and the like and not providing legal advice.

The Law and Analysis

[19] Under r. 15.01(2) of the *Rules*, a "party to a proceeding that is a corporation shall be represented by a lawyer, except with leave of the court".

[20] The moving party has the onus of satisfying the court that leave should be granted to allow the representation of a corporation by a non-lawyer.

[21] The principles that the court is to consider on a motion to grant leave under r. 15.01(2) are set out by Doi J. in the decision of *Glycobiosciences v. Amosey*, 2020 ONSC 2566, at paras. 10-12, as follows:

In exercising the discretion to grant leave under Rule 15.01(2), the courts have considered the following:

- (i) Whether the proposed representative has been duly authorized by the corporation to act as its legal representative;
- (ii) Whether the proposed representative has a connection to the corporation;
- (iii) The structure of the corporation in terms of shareholders, officers and directors and whether it is a closely held corporation;
- (iv) Whether the interests of shareholders, officers, directors, employees, creditors and other potential stakeholders are adequately protected by the granting of leave;
- (v) Whether the proposed representative is reasonably capable of comprehending the issues in the litigation and advocating on behalf of the corporation. The Court should not impose too high a threshold at this stage, given that the courts abound with self-represented litigants of varying skills. The proposed representative should, however, be reasonably capable of comprehending the issues and articulating the case on behalf of the corporation;
- (vi) Whether the corporation is financially capable of retaining counsel. Access to justice has been a concern troubling

courts at all levels in Canada for some considerable time. It is fundamental to integrity of the courts and the reputation of the administration of justice that the parties have reasonable access to the courts. If the refusal to grant leave would effectively bar a corporation from access to justice, this factor should be given considerable weight.

Factors that may justify a refusal of leave include: (i) inadequate materials filed; (ii) failure to follow court direction; and (iii) evasive answers in previous court matters.

Ultimately, the court is to ensure that the interests of justice are served. Rule 1.04 directs the court to construe the rules to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits. [Citations omitted.]

[22] For the following reasons, I do not find that Night Hawk has satisfied its onus to justify the granting of leave to allow it to be represented by a non-lawyer.

[23] In my view, the plaintiffs' materials in support of the motion are inadequate. The affidavit in support of the motion is limited to four paragraphs, unsupported by material evidence, wherein Ms. Hollister states that she and Mr. Carle are officers and directors of the plaintiff corporation, and that they are capable of acting for the corporate plaintiff in that they have been involved in other court proceedings in the past.

[24] The plaintiffs provide no evidence of their previous involvement in court proceedings or whether they have previously represented the plaintiff corporation beyond the bald statement in Ms. Hollister's affidavit.

[25] There is no evidence as to whether the plaintiffs have been duly authorized by the plaintiff corporation's board of directors or even who comprises the board of directors. Mr. Carle's submissions in that regard were not helpful. Moreover, there is no evidence as to whether the interests of other potentially interested parties (shareholders, stakeholders, creditors, etc.) are adequately protected by granting leave.

[26] The plaintiffs have failed to provide any financial information regarding the corporation. There is no evidence before the court to establish the financial ability or inability of the corporation to instruct and retain counsel. Mr. Carle's submission that the corporation will likely retain a lawyer if the AGC is not interested in resolving the matter, could lead to the conclusion that the corporation has the financial capacity to do so.

[27] Based on the record before me, in my view, Mr. Carle and Ms. Hollister are not capable of comprehending the legal issues in this litigation and articulating their case on behalf of the plaintiff corporation. This matter has been disorganized from its inception.

[28] From the outset of the litigation up to and including the argument of the motion, the plaintiffs maintained the view that, once commenced, this action should proceed directly to mediation without the need for a lawyer for the corporation. Indeed, in his submissions, Mr. Carle indicated that they had not retained counsel for the corporation, because, in his view, it was premature. Hence, nothing has moved forward in the litigation.

[29] Adding to the confusion is the involvement of Mr. Jackman, a suspended lawyer, to act as a facilitator, to establish a process for mediation. Although Mr. Carle submitted that Mr. Jackman was simply someone who was helping the plaintiffs by making photocopies etc., that is not borne out by the evidence. Mr. Jackman's September 3, 2023 email to the AGC is not helpful and in my view, highlights the need for a lawyer to be retained to represent the corporate plaintiff.

[30] Finally, it is apparent by the inadequate material filed on the motion, the fact that it took over two years and three unsuccessful attempts to bring the motion to a hearing and that the plaintiffs sought to add "Attorney General of Canada" as a defendant rather than replace the improperly named "Indigenous Relations and Northern Affairs Canada" as a defendant in this action further supports my view that Mr. Carle and Ms. Hollister are not capable of comprehending the legal issues in this litigation and articulating their case on behalf of the plaintiff corporation.

Conclusion

[31] For the reasons outlined above:

- i- I deny leave to the plaintiff corporation to be represented by Guillaume Carle and Lynn Hollister and dismiss the plaintiffs' motion in that regard. The plaintiff corporation is to name counsel to represent it within 30 days.
- ii- The plaintiffs shall amend the statement of claim within 60 days to properly name the Attorney General of Canada as the defendant, in place of "Indigenous Relations and Northern Affairs Canada".

[32] If the parties cannot agree on costs, they may file written submissions not exceeding three pages, exclusive of their respective bills of costs. If necessary, the defendant shall file its costs submissions within 20 days of the release of this decision. The cost submissions of the plaintiffs shall be filed within 10 days thereafter.



Monty A.J.

Associate Justice M. Fortier

Date: May 31, 2024