

Courts rejects corporation's motion to be represented by a consultant

Litigation | Litigation & Dispute Resolution | Rules of Civil Procedure

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Our justice system is designed to work efficiently and to adhere to the highest principles of integrity. In general, parties appearing before a court must either be represented by a lawyer duly licensed through respective provincial Law Societies or must be self-represented. A party cannot simply be represented by an "agent". With respect to corporations, the Ontario *Rules of Civil Procedure* mandate that a corporation must be represented by a lawyer and that leave of the court must be sought where a corporation seeks to be self-represented. However as recently determined in *Brayson Properties Inc. "In Trust" v. Muchos*, 2022 ONSC 940 (not yet available on CanLII), the threshold for a corporation to be self-represented is high, and, moreover, a corporation cannot be represented by an "agent".

The corporation in this case brought a motion under rule 15.01(2) of the *Rules of Civil Procedure* to be represented by JM, who described himself to be an "executive consultant". Although he was the son of corporation's principal, JM was neither a lawyer nor a director or an officer of the corporation.

The corporation's action was also complex. It involved a claim related to a failed property purchase and sought \$6 million in damages for fraud, breach of contract and unlawful interference with contractual relations.

JM submitted that he ought to be allowed to represent the corporation on the grounds that he had been allowed to represent corporations before and that he had sufficient knowledge and experience to act for his father's corporation in this action.

The defendants disagreed for multiple reasons, including that JM would likely be the primary witness in the action because he had been heavily involved in the failed real estate transaction and that there had already been irregular circumstances related to the handling of the case. The defendants showed that JM had requisitioned that they be noted in default despite having served a statement of defence and counterclaim and that JM had filed affidavits containing hearsay and privileged settlement discussions with one of the defendants' lawyers.

Although the rules give the Court discretionary authority to allow a corporation to be represented by a non-lawyer, case law demonstrates that the discretion is guided by a number of non-exhaustive factors and public policy.

In *Extend-A-Call Inc. v. Granovski*, 2009 CanLII 33047 (ON SC), the Court listed a number of factors to be considered on a motion seeking leave for a corporation to be represented by a non-lawyer. Those factors included whether the proposed representative was connected to the corporation, whether the proposed representative was reasonably capable of comprehending the issues in the case and advocating on behalf of the corporation, and whether the corporation was financially able to hire a lawyer.

The Court is also obligated to consider the interests of justice when a corporation seeks to be represented by a non-lawyer since representation by a non-lawyer for any litigant is contrary to the *Law Society Act* and the *Solicitors Act*, which regulate the authorized and unauthorized practise of law. Representing a party in a court proceedings constitutes the practise of law. As well, where an individual unconnected to a corporation is allowed to represent the corporation, the individual faces no cost consequences.

These public policy concerns have been commented upon by the Courts in cases such as *Leisure Farm Construction Ltd. v. Dalew Farms Inc.*, 2021 ONSC 105 and *Robert M. Simon Construction Ltd. v. Waterloo (Municipality)*, 2007 CanLII 18741 (ONSC).

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In the circumstances, the Court dismissed the corporation's request for leave to be represented by JM.

Aside from accepting the public policy reasons for limiting a corporation's ability to be represented by a non-lawyer, the Court also noted that:

- a) the corporation was a closely-held corporation, whose assets could not be located by the defendants;
- b) JM held no official position with the corporation;
- c) Government of Canada records disclosed that JM was in ongoing bankruptcy proceedings;
- d) JM was a likely witness in the matter;
- e) a previous matter in which JM had been an agent for a corporation was found to have been frivolous and vexatious, with costs being awarded against the corporation; and
- f) there was a real risk of substantial prejudice to the defendants if the corporation was not represented by a lawyer.

The evidence presented on the motion also did not disclose that the corporation was financially unable to hire a lawyer. Indeed, the opposite appeared to be true because the owner of the corporation had deposed that the corporation would hire a lawyer if and when it felt it was necessary to do so.

Representation by Gardiner Roberts LLP

One of the defendants in this action was a lawyer. The lawyer, on behalf of most of the defendants, opposed the corporation's motion. The lawyer was represented by James Cook, a senior partner in Gardiner Roberts LLP's dispute resolution group.

For more information please contact: **James Cook** at **416.865.6628** or jcook@grllp.com

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Authors



Stephen A. Thiele

Partner

416.865.6651
sthiele@grllp.com



James R.G. Cook

Partner

416.865.6628
jcook@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com