

SUPREME COURT OF YUKON

Citation: *R v Sidhu*
2026 YKSC 1

Date: 20260119
S.C. No. 25-AP012
Registry: Whitehorse

BETWEEN:

REX

RESPONDENT

AND

P.S. SIDHU TRUCKING LTD

APPELLANT

Before Chief Justice S.M. Duncan

Counsel for the Respondent Amy Porteous
Agent for P.S. Sidhu Trucking Mandeep Sidhu

REASONS FOR DECISION

Overview

[1] This is an application to extend time for the filing of an appeal of an interlocutory decision by the Territorial Court prohibiting P.S. Sidhu Trucking Ltd. (Sidhu Trucking) , the corporate defendant, from being represented by a non-lawyer, Mandeep Sidhu, in a regulatory prosecution under the *Environment Act*, RSY 2002, c 76 (the *Act*) and the *Special Waste Regulations*, OIC 1995/047 (the *Regulations*).

[2] The Crown opposes the application because: i) there is no right of appeal of an interlocutory order until the final order is granted; and ii) it does not meet the test for an

extension of time because the applicant has not shown a bona fide intention to appeal; has not satisfactorily accounted for or explained the delay; and there is no merit to the appeal.

[3] For the following reasons I deny Sidhu Trucking's application for an extension of time to appeal.

Issues

[4] There are two issues in this application:

- i) Does this Court have jurisdiction to hear this appeal, given it is from an interlocutory order and the prosecution is not yet complete?
- ii) If this Court does have jurisdiction, does this application meet the test for an extension of time to appeal?

Background

[5] P.S. Sidhu Trucking Ltd., a corporation, was charged under the *Act* and the *Regulations* for failure to handle or dispose of special waste with the appropriate permit in accordance with the *Act* and *Regulations*, and to provide the appropriate training to all personnel to carry out the permit requirements. The corporation is the sole defendant.

[6] The prosecution was commenced in 2023 and is still active. Not guilty pleas were entered on March 12, 2024. Originally, Sidhu Trucking was represented by legal counsel, and a trial was set for September 18-20, 2024. On the eve of trial, counsel was permitted to withdraw as counsel for Sidhu Trucking, and the trial dates were vacated. Since that time, Mandeep Sidhu has been appearing in court on behalf of Sidhu Trucking. Approximately 20 court appearances have occurred in the form of case

management conferences or pre-trial conferences, focussing primarily on the representation issue.

[7] The ability of Mandeep Sidhu to represent Sidhu Trucking was argued before the Territorial Court judge in writing through written submissions from the Crown, Mandeep Sidhu and an *amicus curiae* along with the right of oral reply. The Territorial Court judge's decision was delivered on July 2, 2025, a date fixed in Court in the presence of Mandeep Sidhu on May 22, 2025. No one attended for Sidhu Trucking on July 2, 2025, and a bench warrant was held. The 30-day appeal deadline expired on August 4, 2025.

[8] The Territorial Court Judge decided that the *Legal Profession Act*, SY 2017, c 12 applied and prohibited Mandeep Sidhu from representing Sidhu Trucking. There was no dispute that he is providing legal services under the statute (s. 30) and is not authorized to do so. There are no exceptions in the statute or the regulations to allow a corporation to be legally represented by its directors or employees of their choice who are not legal counsel.

[9] Sidhu Trucking seeks to appeal this decision now but needs an extension of time to do so. The Notice of Application and Reply of the Applicant state it took steps to file the Notice of Appeal on July 6, 2025, but was rejected. Sidhu Trucking further states the decision was not communicated to it until July 7, 2025. The intention to appeal was communicated by Sidhu Trucking through Mandeep Sidhu to the Crown's office and the Territorial Court, at the July 22, 2025 court appearance.

[10] On July 8, 2025, the Crown's office sent a copy of the filed decision to Sidhu Trucking's registered office, advising of the July 22, 2025 court date. On July 17, 2025, the Crown emailed a copy of the decision to Mandeep Sidhu directly, and on July 21, 2025, another copy was sent to the email address from which Mandeep Sidhu

responded. The Crown advised Mandeep Sidhu in the first email that she understood the decision was delivered orally in court on July 2, 2025.

[11] Mandeep Sidhu also appeared at an August 5, 2025, court appearance at which time the file was adjourned to September 9, 2025.

[12] Sidhu Trucking filed its Notice of Appeal on August 6, 2025, two days after the statutory deadline.

Analysis

i) Does the Court have jurisdiction to hear this appeal?

[13] Sidhu Trucking argues that the interests of justice and the principle of fairness require an immediate appeal, before further steps are taken in the prosecution. The issue of who can represent Sidhu Trucking does not affect the subject matter of the prosecution and instead relates to the administration of justice. It is a final decision, not an interlocutory one. The Territorial Court decision handcuffs Sidhu Trucking and changes the way they are able to proceed with the case. The enormous unjustified expense they are required to incur by hiring a lawyer is prejudicial.

[14] The Crown argues that the Territorial Court decision is interlocutory. While it is a final order on a collateral matter, it is not determinative of the prosecution matter. The authorities confirm the general long-established principle or rule that there are no interlocutory appeals in criminal matters. While there are some exceptions, such as where an order is made without jurisdiction, or is unrelated to the trial process, or amounts to an acquittal (*R v Rodrigue* (1994), 95 CCC (3d) 129 (Y CA) (*Rodrigue*) at para 33), these exceptions are not engaged here. The remedy is to appeal after the trial.

[15] Appeals are creatures of statute and there is no inherent jurisdiction to hear them (*Rodrigue* at paras. 8, 9, 11, 31, 32; *Knox Contracting v Canada*, [1990] 2 SCR 338 (*Knox*) at 12-14)

[16] Here, this Court's jurisdiction to hear appeals of Territorial Court regulatory prosecution decisions is found in the *Summary Convictions Act*, RSY 2002, c 210. That Act incorporates every provision of the *Criminal Code*, RSC, 1985, c C-46 (the *Code* or the *Criminal Code*) applicable to summary conviction matters except to the extent that they are contradicted by other Acts or enactments, and further clarifies that "every provision of the *Criminal Code* that applies to an appeal of a summary conviction matter or proceeding applies to an appeal of a summary conviction matter or proceeding under [the *Summary Convictions Act*]" (ss. 2.01(1) and (2)).

[17] There are two *Criminal Code* sections that authorize the defendants to bring summary conviction appeals, and that therefore authorize superior courts to hear them: sections 813 and 830. Sections 813 and 830 permit appeals in the following circumstances:

813 Except where otherwise provided by law,

- (a) the defendant in proceedings under this Part may appeal to the appeal court
 - (i) from a conviction or order made against him,
 - (ii) against a sentence passed on him, or
 - (iii) against a verdict of unfit to stand trial or not criminally responsible on account of mental disorder; and
- (b) the informant, the Attorney General or his agent in proceedings under this Part may appeal to the appeal court

- (i) from an order that stays proceedings on an information or dismisses an information,
- (ii) against a sentence passed on a defendant, or
- (ii) against a verdict of not criminally responsible on account of mental disorder or unfit to stand trial,

and the Attorney General of Canada or his agent has the same rights of appeal in proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that Government as the Attorney General of a province or his agent has under this paragraph.

830 (1) A party to proceedings to which this Part applies or the Attorney General may appeal against a conviction, judgment, verdict of acquittal or verdict of not criminally responsible on account of mental disorder or of unfit to stand trial or other final order or determination of a summary conviction court on the ground that

- (a) it is erroneous in point of law;
- (b) it is in excess of jurisdiction; or
- (c) it constitutes a refusal or failure to exercise jurisdiction.

[18] The wording of s. 830 clearly limits appeals to final orders. The wording of s. 813 is not as express - "may appeal from a conviction or **order made against him**" (emphasis added) - but courts have interpreted this in the context of the general rule applicable to interlocutory criminal appeals: i.e. they are limited to final orders dismissing the information or otherwise disposing of the case. This principle has been found to apply equally to regulatory prosecutions (*R v Dougan*, 2016 BCSC 1815 at para. 37). In this case, the incorporation by reference of the *Code* provisions into the *Summary Convictions Act* also incorporates this principle. In short, the *Code* does not provide for interlocutory appeals and the *Summary Convictions Act* replicates this.

[19] There are good policy reasons for limiting interlocutory appeals in the criminal or regulatory prosecution context. The Supreme Court of Canada in *Knox* (at 14), after

finding that the issuance of search warrants is an interlocutory procedure, wrote that it was appropriate that the *Code* “provides no avenue for appeal from these procedures, as such appeals are neither desirable nor necessary and should not, as a general rule, be encouraged.” More specifically, the Court in *R v Sekhon*, 2016 BCSC 1697 (*Sekhon*) noted that interlocutory criminal appeals can result in delay, the fragmentation of the criminal process, decisions based on an inadequate record, and wasted time and effort on issues that may be premature or in the end unnecessary (*Sekhon* at para. 8).

[20] Exceptional circumstances can bestow jurisdiction on a court to hear an interlocutory appeal. As noted above, the Court of Appeal of Yukon in *Rodrigue* stated that if an order in the midst of a trial process is made without jurisdiction, is unrelated to the trial process, or amounts to an acquittal, the court will have jurisdiction to hear the appeal on an interlocutory basis.

[21] Here, Sidhu Trucking argues that the issue of their legal representation is one of those exceptional circumstances. They rely on the decision of the Court of Appeal of Newfoundland and Labrador in *R v Pardy*, 2014 NLCA 37 (*Pardy*), where the issue was whether the accused, charged with first degree murder, could appeal a decision of the trial judge denying the accused an order that he was entitled to a lawyer of his choice from the private bar to be paid for by the state, at a negotiated rate. The Court of Appeal found it did have jurisdiction to hear the appeal, because the matter of whether Mr. Pardy was entitled to be represented at private bar rates at public expense was one that related to the administration of justice and the decision to spend public funds, not related to the trial process. The Court of Appeal characterized it not as whether the litigant could be represented by a specific lawyer, but whether the litigant was entitled to a lawyer at public expense. The Court of Appeal then went further and said this issue

raised the question of whether the accused would have to go to trial without legal help, creating a greater risk of affecting the accused's ability to make full answer and defence, and ultimately a possibility of wrongful conviction. The Court of Appeal held that the provision and funding of counsel did not relate substantively or procedurally to the criminal charge (*Pardy* at para 29).

[22] Sidhu Trucking says similarly in this case the question of whether Mandeep Sidhu is entitled to represent them must be decided now, because it affects their ability to move forward with the defence of the case in their preferred way. The Territorial Court decision requires them to spend money they do not want to spend retaining a lawyer and requires them to overcome the hardship of finding a lawyer to represent them. Further, Sidhu Trucking argues that exercising their right of appeal at the end of the case (if they are unsuccessful) is too late because the representation issue affects the whole case and cannot be fixed after the fact.

[23] The Crown distinguishes *Pardy* and instead relies on *R v Druken*, [1998] 1 SCR 978 (*Druken*). In that case, there was an application by the Crown to remove defence counsel due to a conflict of interest. The dissenting judge at the Court of Appeal, whose decision was upheld by the Supreme Court of Canada, held that the Court had no jurisdiction to hear the appeal. Contrary to the argument of the accused, the order removing defence counsel was not a final order because it did not determine the real issue. It was final with respect to a collateral matter that was not determinative of the matter before the court (*Druken* at para 29).

[24] *Pardy* is distinguishable from *Druken*. In *Druken* the Crown brought the application to remove defence counsel, whereas in *Pardy*, the application was brought by the accused to have publicly funded private counsel of his choice, and the Crown

prosecutor did not participate in the application. The *lis* in the *Pardy* application was between the accused and the Attorney General as public funder, wearing a hat different from the prosecution. It was purely an administration of justice concern on its face. The trial judge's decision sought to be appealed was about who would pay for the accused's legal representation.

[25] By contrast, the Crown prosecutor's concern in *Druken* was that the criminal proceedings would not be fair if that particular defence counsel remained on the record. The concern was related to the conduct of the criminal proceedings. The nature of the defence counsel's relationship to certain individuals and issues in the trial affected the trial process but was not related to the substance of the charges. If the decision to remove defence counsel was made in error, it could be a ground of appeal at the end of the trial.

[26] In this case, I agree with the Crown that the decision of the Territorial Court judge is not a final order, but an interlocutory one. It is a decision on a collateral matter related to the trial process, but has no bearing on the determination of the substantive regulatory prosecution issues. Like the decision to remove defence counsel in *Druken*, it can be reviewed after the trial through the normal appeal process. If the Territorial Court judge is found to be in error, and Sidhu Trucking should have been allowed to be represented by Mandeep Sidhu, then the final decision in the matter may be affected. Costs may be awarded if the appeal is successful. In other words, Sidhu Trucking will still have a remedy.

[27] It seems that an underlying concern of the Court of Appeal in *Pardy* was the potential spectre of the accused proceeding to trial on a murder charge without legal representation because of the courts decision to deny him state-funded counsel at

private bar rates, and given the accused's position that he could not form a proper solicitor-client relationship with any of the Legal Aid lawyers offered to him.

[28] Here, the Territorial Court judge's decision has the opposite effect. There is no risk from the decision here that Sidhu Trucking will not have legal representation. Rather, the decision mandates the retaining of a duly qualified legal practitioner to advise and represent Sidhu Trucking in this proceeding. In this way, the regulatory prosecution can continue in a way that ensures the rights of Sidhu Trucking are preserved.

[29] I appreciate that Sidhu Trucking believes that Mandeep Sidhu is better placed to represent them than any lawyer, because of his skill set, knowledge of the business, and trust relationship with the principals. Further, the benefit of no legal fees is important to them. Mandeep Sidhu points to the progress he has made thus far with the Crown on reducing the charges from five to two and on developing an agreed statement of facts. But none of these reasons is sufficient to justify a departure from the general rule of no interlocutory appeals in this circumstance. This is not one of the exceptional circumstances identified in the case law. If Mandeep Sidhu is correct and much good progress towards resolution has been made, then the legal costs should be minimal.

[30] For these reasons, this Court has no jurisdiction to hear the appeal of the Territorial Court decision.

ii) Extension of Time to File Appeal

[31] Given my decision on the first issue, it is not necessary for me to decide the issue of whether an extension of time to file the appeal should be granted. In the event that I am wrong on the first issue, I provide brief reasons on the second issue.

[32] On balance, considering the interests of justice, I would grant the extension to file the Notice of Appeal.

[33] In *R v Alrawashdeh*, 2021 YKSC 8 (*Alrawashdeh*), this Court listed the factors court consider in requests for extensions of time:

- a) whether the applicant has shown a *bona fide* intention to appeal within the appeal period;
- b) whether the applicant has accounted for or explained the delay;
- c) whether there is merit to the proposed appeal;
- d) when the respondent was informed of the intent to appeal; and
- e) whether the respondent would be prejudiced by the extension (at para. 14).

The decisive question for the court is whether it is in the interests of justice to grant an extension. This question encompasses the other factors as well as the parties' interests and whether they have complied with the Supreme Court of Yukon *Rules of Court*.

[34] The Crown opposes the extension of time based on a further delay not serving the interests of justice generally, and the absence of merit to the appeal, and of a reasonable explanation for the delay.

[35] Applying the above-noted factors here:

- a) Sidhu Trucking stated through Mandeep Sidhu on July 22, 2025, in court in the presence of a Crown prosecutor their intention to appeal, as well as their intention not to retain legal counsel. The matter was adjourned to August 5, 2025, at which time the appeal had not yet been filed. While there was no ability to determine the good faith of this expressed intention to appeal, the fact that an appeal was filed on August 6, 2025, two days

after the deadline, supports this inference. This factor supports an extension of time.

- b) Sidhu Trucking's explanation for the delay is unsatisfactory. On the one hand, Mandeep Sidhu says he did not learn of the decision until July 7, 2025. However, he also said he tried to file appeal documents on July 6, 2025, but was rejected. No further details or evidence of such attempts was provided. This incongruity makes his explanation difficult to accept. Further, there was no explanation of why Sidhu Trucking did not appear in Court on July 2, 2025, to receive the decision, especially as Mandeep Sidhu was present in Court on May 22, 2025, when that date was set. The failure to appear on July 2, 2025, does not justify an extension of time. The Crown prosecutor's office sent the decision to Sidhu Trucking on July 8, 2025, to Mandeep Sidhu on July 17, 2025, and July 21, 2025, to two different email addresses. This factor militates against an extension of time.
- c) Sidhu Trucking sets out no details in their notice in support of the merits of the appeal. At the hearing Mandeep Sidhu made arguments about why Sidhu Trucking preferred being represented by him (no costs, trust, difficulty in finding a lawyer) but did not point out errors in the trial judge's decision. He stated his disagreement with the decision because it does not accord with Sidhu Trucking's preference. Sidhu Trucking's preference cannot override legal requirements. He also raised a type of estoppel argument based on the Crown's continued interactions with him for several months as they attempted to resolve the matter and prepare for

court appearances. However, the Crown says they carried on negotiating with Mandeep Sidhu while at the same time expressing objection in court to Sidhu Trucking failure to have legal representation. This factor does not favour an extension of time.

- d) The Crown was informed Sidhu Trucking intention to appeal on July 22, 2025. This factor supports an extension of time.
- e) The Crown concedes the two-day delay in the attempt to file the appeal is not prejudicial in and of itself. This factor supports an extension of time.

[36] Despite the absence of prejudice from a two-day delay in filing, the Crown notes that an appeal would create another delay in an inordinately drawn-out prosecution. This is a consideration for the interests of justice.

[37] While more of the enumerated factors support a denial of the extension of time, this assessment is not a mathematical calculation. "...[T]he weight to be given to any factor will depend on the circumstances of each case...in some cases the weight to be given to one or more criteria will be negligible because it is so heavily outweighed by the weight which must be given to others" (*Alrawashdeh* at para. 31).

[38] Here, because of the impact of this issue not only for this case but also in general, it is in the interests of justice to permit an extension of time to file an appeal, particularly since an intention was expressed, known to the prosecution, there was no prejudice; and the delay was only two days. I caution Mr. Sidhu however, that his failure to appear in Court on July 2, 2025 without explanation, and his incongruous explanation of the rejection of his attempt to file the Notice of Appeal were serious shortcomings showing at best a lack of respect for court processes and at worst a lack of

forthrightness with the Court. These concerns were almost sufficient to tip the balance against granting an extension of time to the applicant.

Conclusion

[39] The appeal shall not be heard as an interlocutory appeal, as the statute and jurisprudence, applied to the facts of this case, provide no basis for the Court to depart from the general rule of no interlocutory appeals in criminal or regulatory prosecutions.

DUNCAN C.J.