

Citation: *R. v. P.S. Sidhu Trucking Ltd.*, 2025 YKTC 36

Date: 20250702
Docket: 23-04489
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Cairns

REX

v.

P.S. SIDHU TRUCKING LTD.

Appearances:
Kelly McGill
No one
Debbie Hoffman

Counsel for the Territorial Crown
Counsel for the Defence
Amicus Curiae

This decision was delivered from the Bench orally and has since been edited without changing its substance.

RULING ON APPLICATION

[1] CAIRNS T.C.J. (Oral): A corporation, P.S. Sidhu Trucking Ltd., (“P.S. Sidhu” or the “corporate defendant”) is charged with offences contrary to the *Environment Act*, RSY 2002, c. 76 and the *Special Waste Regulations*, O.I.C. 1995/047. Not guilty pleas have been entered, and a three-day trial was scheduled in September 2024. The day before trial, counsel for P.S. Sidhu successfully applied to be removed as counsel of record. Following the removal of counsel, Mr. Mandeep Sidhu began appearing on behalf of the corporation. Mr. Sidhu is a director of the corporation, but he is not a

lawyer. New trial dates were set for January 2025. Prior to the January trial dates, the question arose of whether Mr. Sidhu could represent the corporate defendant.

Can Mr. Sidhu represent the corporate defendant on these charges?

[2] Section 45 of the *Legal Profession Act*, SY 2017, c. 12, prohibits the provision of legal services other than in accordance with the *Legal Profession Act*, the *Legal Profession Regulation*, O.I.C. 2020/027, or the Rules of the Law Society of Yukon. It is not disputed that Mr. Sidhu's representation of the corporate defendant in these proceedings falls within the meaning of "legal services" as that term is defined in s. 30 of the *Legal Profession Act*. It is also not disputed that Mr. Sidhu does not fall within the categories of people authorised by the *Legal Profession Act*, the *Legal Profession Regulation*, or the Rules of the Law Society of Yukon to provide legal services. The Legislature could have created an exception to allow the representation of a corporation by its directors, but it did not. As well, the Commissioner in Executive Council may, in accordance with s. 19 of the *Legal Profession Act*, make a regulation create such an exception; however, it has not done so.

[3] For the purposes of arguing this issue, Mr. Sidhu was allowed to appear and make submissions. However, as Mr. Sidhu is not a lawyer, and this issue has broad implications, it would not have been fair to leave the burden of arguing this issue to this corporate defendant alone. As such, I appointed *amicus curiae* to ensure that the Court had the benefit of comprehensive legal submissions addressing and responding to the prosecution's arguments and bringing any additional concerns that may arise to the Court's attention. *Amicus curiae* was not appointed to assist the corporate defendant

but, rather, in the interests of fairness, to assist the Court in understanding how to interpret the relevant statutes.

[4] It must also be acknowledged that the corporate defendant filed the affidavit of Paramjit Sidhu, one of the owners of P.S. Sidhu. The affidavit confirms that Mr. Sidhu is the corporate defendant's choice to represent it, describes the corporate defendant's perspective on its dealings with prior legal counsel in relation to the current charges, and sets out Mr. Sidhu's experience in dealing with legal matters and his educational background. Given that the affidavit sets out that Mr. Sidhu has appeared in court previously, I note that the agreement of the parties or the failure of a party to object neither requires nor justifies the decision to grant permission to a non-lawyer to represent a corporation (*GlycoBioSciences Inc. (Glyco) v. Industria Farmaceutica Andromaco, S.A., de C.V.*, 2024 ONCA 481, at para. 9). While the affidavit information assists me in understanding P.S. Sidhu's perspective, it offers little assistance in addressing the legal issues.

Argument

[5] On behalf of the corporate defendant, Mr. Sidhu brings two arguments. First, he argues that the *Criminal Code*, which is incorporated into the *Summary Convictions Act*, RSY 2002. c. 210, prevails over the *Legal Profession Act* and allows him to provide legal services to P.S. Sidhu before this Court. Second, he argues that the *Legal Profession Act* violates P.S. Sidhu's s. 11(d) *Charter* right to a fair trial.

Does either the *Criminal Code* or the *Summary Convictions Act* allow Mr. Sidhu to represent P.S. Sidhu?

[6] The *Summary Convictions Act* governs the territorial prosecution against P.S. Sidhu. Mr. Sidhu argues that the *Summary Convictions Act* allows representation by an agent, noting in particular that the *Summary Convictions Act* incorporates provisions of the *Criminal Code*.

[7] Section 2.01 of the *Summary Convictions Act* reads as follows:

2.01 Incorporation and application of provisions of Criminal Code

(1) Every provision of the *Criminal Code* that applies to a summary conviction matter or proceeding is deemed to be incorporated and adopted as part of this Act and applies, with any modifications that the circumstances require, to a proceeding under this Act except to the extent that

(a) this Act or an enactment provides otherwise; or

(b) the provision is inconsistent with this Act or another enactment.

[emphasis added]

[8] Mr. Sidhu relies on the incorporation of s. 800(3) of the *Criminal Code* into the *Summary Convictions Act*. That section reads:

Where the defendant is an organization, it shall appear by counsel or agent and, if it does not appear, the summary conviction court may, on proof of service of the summons, proceed *ex parte* to hold the trial.

[9] Mr. Sidhu argues that, in contrast to the *Legal Profession Act*, the *Criminal Code* does not limit who can appear as agents and it can therefore be relied on to allow him to represent P.S. Sidhu. Referring to s. 26 of the *Yukon Act*, S.C. 2002, c.7, Mr. Sidhu

argues that the conflict between the *Summary Convictions Act*, the *Criminal Code* and the *Legal Profession Act* must be resolved on the basis of the doctrine of federal paramountcy.

[10] This argument fails on at least two grounds.

[11] First, s. 2(2) of the *Summary Convictions Act* is explicit that its provisions do not prevail over the provisions of any other Act. Section 21 of the *Interpretation Act*, RSY 2002, c. 125, defines “Act” to mean “an ordinance of the Yukon enacted pursuant to the *Yukon Act (Canada)*”. This means that the provisions of the *Legal Professions Act* limiting who can provide legal services prevail over the *Summary Convictions Act*. To the extent that the *Summary Convictions Act* allows appearances through an agent, these sections cannot be interpreted to allow Mr. Sidhu to provide legal services as an agent for P.S. Sidhu. Such an interpretation would be inconsistent with the *Legal Profession Act*.

[12] Second, federal paramountcy has no application; it is simply not engaged in this case. The provisions of the *Criminal Code* incorporated into the *Summary Convictions Act* do not retain the force of federal legislation; rather they form part of the territorial statute into which they are incorporated. As noted in *R. v. St. Lawrence Cement Inc.* (2002), 60 O.R. (3d) 712 (ON CA):

[18] ...The effect of incorporation by reference is that the material incorporated is considered to be part of the text of the legislation.

[13] In *Zielke v. Law Society of Saskatchewan*, 2021 SKCA 156, the effect of incorporation of *Criminal Code* provisions into the Saskatchewan *Summary Offences Procedure Act*, 1990, c. S-63.1, was addressed as follows:

82 Paramountcy is a doctrine that is applied when federal and provincial laws collide. The provisions of the *Criminal Code* ... are not applicable in the matters at issue in this appeal because of their direct application as federal law. Instead, they apply because they have been incorporated by reference into provincial law by s. 4 of the *SOPA*. ...

83 Based on all of this, the constitutional doctrine of paramountcy does not come into play at all in resolving the issues in this appeal. ...

[14] In short, the provisions of the *Criminal Code* incorporated into the *Summary Convictions Act* form part of territorial legislation. As noted, by application of s. 2(2) of the *Summary Convictions Act*, the provisions of the *Summary Convictions Act* do not prevail over the *Legal Profession Act*. Even more explicitly, as the prosecution notes, the incorporation of the *Criminal Code* provisions come with the caveat at s. 2.01 that the provisions only apply to the extent they are not inconsistent with the *Summary Conviction Act* or other Yukon enactments.

Does the *Legal Profession Act* violate P.S. Sidhu's s. 11(d) *Charter* rights?

[15] Mr. Sidhu argues that the *Legal Profession Act* violates P.S. Sidhu's constitutional right to a fair trial under s. 11(d) of the *Charter*. While the application of *Charter* rights to corporations has limitations, it is not disputed in this case that the s. 11(d) right to a fair trial applies to corporations. The onus of establishing that P.S. Sidhu's right to a fair trial is violated falls to P.S. Sidhu. For the following reasons, I find that the onus has not been met.

[16] Section 11(d) does not guarantee “the most favourable procedures imaginable” for the defendant, nor is the “broad principle of trial fairness assessed solely” from the defendant’s perspective (*R. v. J.J.*, 2022 SCC 28, at para. 125). Denying non-lawyers, the right to represent corporations in territorial prosecutions, and to practise law without some measure of control or regulation does not, in my view, infringe upon a corporation’s right to a fair hearing — if anything, the requirements of the *Legal Profession Act* work to ensure a proper hearing and are animated by the broader principle of protecting the public.

[17] In a nutshell, Mr. Sidhu’s argument is that the requirement to retain legal counsel poses an economic burden that compromises the corporate defendant’s ability to make full answer and defence. Mr. Sidhu relies on *De La Rocha v. Markham Endoscopy Diagnostics Inc.*, 2010 ONSC 5100, to argue the issue of access to justice, namely, whether a corporation is financially capable of retaining counsel. The *De La Rocha* decision was heard in Ontario, where the *Rules of Civil Procedure* permit corporations to seek leave of the court to be represented by a non-lawyer; there is no similar rule applicable to these proceedings.

[18] Even if such a rule did apply in this matter, Mr. Sidhu presented no evidence on behalf of the corporate defendant that retaining counsel was beyond the means of P.S. Sidhu. To the contrary, the affidavit of Paramjit Sidhu made clear that the breakdown in the prior solicitor-client relationship was not related to finances but, rather, to a disagreement over how to proceed and a dissatisfaction with the legal advice provided.

[19] Turning to *Maddock v. Law Society of British Columbia*, 2023 BCCA 53, at paras. 28 and 29, it is clear that the issue of access to justice does not operate in isolation and “the solution to the problem of access to justice is not to permit untrained, unregulated and unaccountable individuals to act as legal counsel”.

[20] Concerns about access to justice must be balanced with other important objectives. The restrictions in the *Legal Profession Act* must be understood to reflect the Legislature’s considered determination that the public is better protected when only practicing lawyers are authorized to represent others in legal proceedings. Certainly, the Legislature would have been aware that a non-lawyer may have the skills and technical knowledge to provide legal services; nonetheless, the *Legal Profession Act* was drafted to prohibit non-lawyers from providing legal services with only a few exceptions (s. 31). Indeed, the Legislature sought to dissuade non-lawyers from practising law by making the unauthorized provision of legal services an offence punishable by significant fines (s. 167).

[21] Summarizing what was said in *Maddock*, at para. 29, there is good rationale for this approach. “A non-lawyer... is not required to meet minimum competency requirements, engage in Continuing Professional Development, or comply with codes of conduct.” Non-lawyers are “not subject to disciplinary action, required to get mandatory professional liability insurance, or required to comply with trust accounting rules.” A non-lawyer’s clients do not have the benefit of solicitor-client privilege or the complaints and investigation process if the Law Society Rules or Code of Professional Conduct are breached. In my view, these factors tend to support, not detract from, the right to a fair trial.

[22] Mr. Sidhu goes on to argue that the requirement to be represented by legal counsel applies unfairly to corporations and not to natural persons. This argument, in my view, fails to recognize the differences between corporations and natural persons. A corporation is an artificial entity and, as such, unlike a natural person who can self-represent, corporations cannot personally represent themselves (*Trifidus Inc. v. Samgo Innovations Inc.*, 2011 NBCA 59, at para. 20). Allowing a corporation the right to representation by a non-lawyer would allow corporations a right that natural persons do not have (*Trifidus*, at para. 22).

[23] As stated in *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154, p. 182:

The corporate form of business organization is chosen by individuals because of its numerous advantages (legal and otherwise). Those who cloak themselves in the corporate veil, and who rely on the legal distinction between themselves and the corporate entity when it is to their benefit to do so, should not be allowed to deny this distinction in these circumstances (where the distinction is not to their benefit).

[24] Further, summarizing *Glyco*, at para. 7:

The rationale for the rule requiring representation by a lawyer is plain. A non-lawyer who is closely tied to the corporation ... is akin to a self-represented party, but the separate legal personhood of the corporation means, in effect, that the non-lawyer is providing legal services to another person.... Moreover, non-lawyers are not bound by the *Rules of Professional Conduct*, nor are they subject to the personal financial consequences associated with cost orders that self-represented litigants face.... Permitting a non-lawyer to act also risks creating an undue burden on the respondents and the court. These considerations must be balanced with any concerns that may arise about access to justice....

[25] One of the longstanding costs of incorporation is that a corporation must be represented before the courts by legal counsel (*TPG Technology Consulting Ltd. v.*

Canada, 2011 FCA 345, at para. 8). Having to be represented by legal counsel does not, in my view, render a trial unfair. The *Legal Profession Act* sets out a comprehensive scheme for the regulation of the authorized practice of law in Yukon. It does so in the public interest and with the aim of protecting the public. The statute contains measures to ensure levels of competence and standards of lawyers. It is concerned with the protection of clients and their trust funds, ethical and moral standards of its members, and above all, competency in the conduct of legal matters.

[26] As stated in the *Law Society of Manitoba v. Lawrie*, 1989 CanLII 5218 (MB KB), at para. 28:

One of the anomalies that would arise if the principal objective [of the legislation] were not supported, is the opportunity for disbarred lawyers to continue in the practice of law, or to continue acting as lawyers in the face of their having seriously breached the Law Society's regulations, standards, levels of competence, or as a result of the commission of a criminal offence. This surely was not the legislature's intent. ...

[27] Further, as set out in *Lameman v. Alberta*, 2012 ABCA 59, at para. 25:

...Would it be desirable to bypass the entire elaborate screening and evaluation system by Canada's various law societies and national accreditation bodies, set up by or under legislation, and instead hand that accrediting and disciplinary work to an individual chambers judge with no administrative assistance or records, nor training in this specialized field? Surely not. And it is clearly not the policy of the Legislature.

Conclusion

[28] The *Legal Profession Act* operates to prohibit Mr. Sidhu from representing the corporate defendant. P.S. Sidhu has not established that its right to a fair hearing under

s. 11(d) *Charter* rights has been violated by the requirement to be represented by legal counsel.

[29] One final comment. Various submissions were made regarding the approach taken in the *Small Claims Act*, RSY 2002, c. 204, to legal representation as it, on a superficial consideration, differs from the *Summary Conviction Act* and the *Legal Profession Act*. While I appreciate those submissions, as that statute is not directly in issue before me, I have declined to make any ruling in relation to that statute.

[30] I thank both legal counsel for their thoughtful, articulate, and fair submissions and Mr. Sidhu for articulating P.S. Sidhu's views.

CAIRNS T.C.J.