

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

EVELYN DAWN DHONT

Appellant

- and -

THE MINISTER OF THE DEPARTMENT OF EDUCATION,
CULTURE AND EMPLOYMENT OF THE GOVERNMENT OF THE
NORTHWEST TERRITORIES, THE CHAIR OF THE FINANCIAL
MANAGEMENT BOARD OF THE GOVERNMENT OF THE
NORTHWEST TERRITORIES, AND THE MINISTER OF THE
DEPARTMENT OF JUSTICE OF THE GOVERNMENT OF THE
NORTHWEST TERRITORIES

Respondents

MEMORANDUM OF JUDGMENT

[1] This judgment addresses the question of representation for the appellant in these proceedings. On March 7, 2008, I issued an order granting audience to Mr. Christopher Hunt, husband of the appellant, which means that he can appear and make submissions on her behalf. I said at the time that I would provide reasons for my decision.

[2] This proceeding is an appeal taken under the *Access to Information and Protection of Privacy Act*, S.N.W.T. 1994, c.20. The appellant wants to have her husband speak on her behalf and assist her with preparation of the necessary written materials. Mr. Hunt has a familiarity with court procedures since he worked briefly as a court clerk some 18 years ago. The appellant thinks that her husband would be better able to articulate the arguments on the appeal.

[3] Respondents' counsel did not strenuously object to Mr. Hunt's appearance although he did express some concerns that the proceedings be kept within the parameters of the statutory appeal and not become a wide-ranging inquiry into the conduct of certain government officials. I am satisfied that Mr. Hunt, and the appellant, understand the limits of this appeal and will respect them.

[4] It is trite to observe that everyone has the right to appear in court. But rules of court limit the right of audience to the litigant in person or counsel representing the litigant. There is no automatic right for the litigant to have someone not a lawyer speak on his or her behalf. This is found in Rule 7 of the Supreme Court Rules:

7. (1) A party to a proceeding who is under disability or acts in a representative capacity shall be represented by a solicitor.
- (2) Unless otherwise ordered by the Court, a party that is a corporation shall be represented by a solicitor.
- (3) Any party other than one referred to in subrule (1) or (2) may act in person or be represented by a solicitor.
- (4) Notwithstanding subrules (1) and (2), the Court may grant audience to any individual where it considers it appropriate in the interests of justice.

[5] There are also restrictions imposed by the *Legal Profession Act*, R.S.N.W.T. 1988, c. L-2. Section 68 prohibits any person to engage in the "practice of law" unless he or she is a member of the Law Society of the Northwest Territories. The "practice of law" is defined by the Act as including "appearing as counsel or advocate" (although there is an exemption if the act is not done for or in expectation of a fee, gain or reward from any other person).

[6] There are numerous and justifiable public policy reasons for the restrictions placed on non-lawyers representing people involved in litigation. There is no need for an extensive review but they can be briefly summarized: non-lawyers are not bound by a code of ethics; the solicitor-client privilege does not exist as between a non-lawyer and their client; there is no liability insurance to protect clients from negligence; most non-lawyers do not have the necessary training or education in litigation to properly present the client's case; and, if the non-lawyer acts in an unprofessional manner, there is no disciplinary body to impose sanctions or controls.

[7] There is, however, a distinction between the practice of law, being the right of an individual to represent another person in respect of legal matters, and the inherent right of a superior court to permit a non-lawyer to appear in court as a representative or

advocate for another person, that being the right of audience. The court retains an inherent discretion to decide who may appear and make representations: *Rangelander Holdings Ltd. et al v. City of Calgary* (1997), 196 A.R. 127 (C.A.). This discretion is one of long-standing: *O'Toole v. Scott*, [1965] 2 All E.R. 240 (P.C.).

[8] Generally speaking, courts have interpreted this discretion narrowly, looking for special circumstances, or situations where there is a family relationship between the non-lawyer and the litigant: see, for example, *Grabowski v. Karpiak*, [2001] A.J. No. 1641 (Q.B.). The only case from this jurisdiction that I am aware of that addressed Rule 7(4) is *Public Service Alliance of Canada v. Government of the Northwest Territories*, [2007] N.W.T.J. No. 20 (S.C.). That case, however, dealt with the question of whether an individual could represent a union on a judicial review of an arbitration ruling when it was unclear as to whether the union wanted him to do so or even wanted to pursue the review. That case is therefore of limited general guidance although Schuler J. did note that it is up to the litigant to convince the court that it would be appropriate and in the interests of justice to permit representation by someone other than a lawyer (at para. 20). This is a point repeated in the case law on the subject.

[9] The present case is not difficult. The appellant wants her husband to speak for her and he is not doing it for a fee. Mr. Hunt also has demonstrated acumen since, at the hearing, he presented a case which canvasses many decisions on this point and one that I found very helpful. It is a decision of Master Breitkreuz of the Alberta Court of Queen's Bench in 786372 *Alberta Ltd. v. Mohawk Canada Ltd.*, [2002] A.J. No. 1059.

[10] The *Mohawk* case deals primarily with the representation of a corporate litigant by a non-lawyer. In his decision, however, Master Breitkreuz reviews many of the relevant factors that have been taken into account in the case law (at para. 14). The following is my re-phrasing of those factors:

- expediency;
- potential for unnecessary costs;
- the general ability and understanding of procedures by the non-lawyer;
- the size and complexity of the case;
- potential for delay in the proceedings due to inexperience of the non-lawyer;
- previous difficulties encountered with the non-lawyer;

- economic hardship;
- likelihood of the litigant being able to find a lawyer willing to take on the case;
- in the case of a personal litigant, any family relationship or other close connection to the non-lawyer.

[11] This is a non-exhaustive list and every case will have to be determined on its own merits. But an examination of these factors will I think be helpful when a party is asking to be represented by a non-lawyer.

[12] A review of these factors satisfies me that Mr. Hunt has the ability to represent the appellant and his involvement will not unduly delay the proceedings or add unnecessary expense.

[13] For these reasons, I granted audience to Mr. Hunt to represent the appellant in these proceedings.

J.Z. Vertes
J.S.C.

Dated this 13th day of March 2008.

Mr. Christopher Hunt, appearing
on behalf of the Appellant

Counsel for the Respondents: Sheldon Toner

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MEMORANDUM OF JUDGMENT OF
THE HONOURABLE JUSTICE J.Z. VERTES
