

CITATION: 1343633 Ontario Inc. et al. v. Michael Coghlan et al. 2025 ONSC 3180
COURT FILE NO.: CV-23-00093613-0000
DATE: 2025-05-27

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 1343633 Ontario Inc, Plaintiff

AND:

Michael Coghlan et al, Defendant

BEFORE: Associate Justice Perron

COUNSEL: Dave Morin-Pelletier and Asangwa Asongwed, Sicotte Guilbault s.r.l., for the Plaintiff
Peter Liston, for the Defendant,, Michael Coghlan et Coghlan Accounting Inc., for David Cutler, for the Defendant, Gilles Portelance

HEARD: April 15, 2025

ENDORSEMENT

1. This is a motion by the plaintiffs seeking an order consolidating this 2023 action with the 2021 action bearing Court file number CV-21-00086794-0000. The plaintiffs also seek ancillary orders dealing with next steps for the consolidated actions should the relief sought be granted.
2. The plaintiffs also sought an order removing Mr. Liston as counsel for the Coghlan defendants in the 2023 action. However, that issue was resolved on consent during the lunch break on the day of the motion. Mr. Liston has agreed to remove himself. The Coghlan defendants will not oppose the removal and they understand that they have 60 days to retain a new lawyer. The parties have also agreed to costs of that part of the motion in the amount of \$3,000 payable by the Coghlan defendants to the Plaintiffs within 30 days.
3. A preliminary issue arose at the outset of the hearing today. The matter is bilingual and prior arrangements were not made with the Court for interpreters to be present for interpretation from French to English for Mr. Liston. Mr. Liston made arrangements with a private interpreter, who was present by zoom on Mr. Liston's laptop, but that interpreter

was not a certified court interpreter. The Registrar contacted the Court's interpretation services to see if they could assist however arrangements could not ultimately be made.

4. On returning from a short break while the Registrar was trying to make arrangements, Mr. Liston advised that he was agreeable to proceeding without interpretation. Mr. Cutler confirmed this as well. It was agreed that counsel would make submissions in the language of their choice and that I would ask any questions in the language spoken by counsel.

Facts and Procedural History

5. The 2021 action was commenced by Gilles Portelance. The defendants in that action are 1343633 Ontario Inc. and Gilles-Eric (Eric) Portelance. Gilles and Eric are father and son. The Portelance action seeks various forms of relief including an order that the corporation redeem the whole of Gilles' Class "D" shares valued at \$883,197, a declaration that Gilles' interests as a shareholder have been oppressed and damages for breach of contract in the amount of \$30,000. In the alternative to the redemption order, Gilles claims damages for breach of contract in the amount of \$883,197.
6. Gilles pleads that his entitlement to redeem the shares arises from an agreement entered into between him and the corporation on March 18, 2018 as part of an "Estate Freeze" transaction between him, Eric and the corporation. As a result of the Estate Freeze, Eric exercised day-to-day control of the corporation and Gilles sold his class "A" shares in exchange for Class "D" shares, which Gilles now seeks to redeem.
7. There is no written agreement memorializing the terms of the Estate Freeze transaction.
8. Gilles' claim for \$30,000 deals with an alleged unpaid loan which is not related to the Estate Freeze.
9. Eric and the corporation defended the 2021 action and brought a counterclaim. Eric alleges that after April 2018, Gilles received weekly payments from the corporation towards the share redemption as well as hundreds of thousands of dollars of reimbursement for personal expenses. Eric therefore denies being liable for the sums claimed and in the

alternative, pleads that any amounts owing to Gilles for the share redemption ought to be set off as against the payments that Gilles received from the corporation after April 2018.

10. Eric also pleads, among other things, that notwithstanding the Estate Freeze, his father continued to exercise control over the corporation, wrongfully took possession of the minute books and communicated with the corporation's accountants without any authorization.
11. In Reply, Gilles denies Eric's allegations and pleads that it was agreed and understood that the corporation would continue to pay for some of his expenses following the Estate Freeze and that the payments were approved by Eric and the corporation.
12. The terms of the oral agreement are therefore clearly in dispute. In particular, there is a live issue as to whether or not there was an oral agreement between the parties that the funds received by Gilles from the corporation after April 2018 would be credited against his share redemption entitlement.
13. After the close of pleadings in the 2021 action, Gilles brought a motion for summary judgment which was ultimately scheduled for September 2022.
14. Another contested motion was brought in May 2022 whereby Eric and the corporation were successful in obtaining an order from Justice Doyle granting leave to examine the corporation's accountants (the Coghlan defendants in the 2023 action) as a witness in the summary judgment motion.
15. In January 2023, Justice Gomery released her decision dismissing the motion for summary judgment. Justice Gomery found that since the parties' agreement about Gilles' entitlements and the corporation's obligations as a result of the Estate Freeze was never reduced to writing, adjudication of the issues would depend on whose evidence was more credible and that this determination could not be based solely on the written record. Justice Gomery also found that Gilles was unreasonable in pursuing the summary judgment motion given that Justice Doyle had expressly cautioned Gilles to reconsider whether to proceed with a summary judgment motion. Justice Gomery therefore granted costs to Eric and the corporation in the amount of \$32,720 for the two motions.

16. With respect to the alleged oral agreement pled by Eric to the effect that the value of Gilles' Class "D" shares would be reduced by weekly payments made to Gilles after the Estate Freeze, Justice Gomery was not persuaded that Eric's evidence was so fundamentally implausible that it could be summarily rejected. Despite some circumstantial evidence more consistent with Gilles' position, Justice Gomery found that the evidence did not preclude the possibility of a trial judge accepting Eric's evidence. She also found that Gilles had misstated the circumstances surrounding the Estate Freeze in his affidavit such that his evidence may not be uniformly reliable. On other issues, she found that Eric's allegations about the unauthorized instructions to the corporation's account was arguably supported by Mr. Coghlan's evidence on examination. She found that any credibility assessment of Mr. Coghlan's evidence would be well-placed for a trial judge. She ultimately found that a trial was required for a judge to hear evidence on what the parties agreed to at the time of the Estate Freeze.
17. In September 2023, Eric sought Gilles' consent to the issuance of a Third Party Claim against the Coghlan defendants pursuant to rule 29.02(1.2). The TPC sought damages for negligence and breach of the accountants' fiduciary obligations as well as contribution and indemnity with respect to any amounts for which Eric and the corporation may be found liable towards Gilles.
18. In the proposed TPC, Eric pled that Coghlan was aware, or ought to have been aware, of the changes to the corporation's structure and shareholdings as a result of the Estate Freeze and that Coghlan was negligent because, among other things, he continued to take instructions from Gilles and the payments made to Gilles (of which Eric pleads Coghlan was aware) were not accurately reflected in the corporation's financial statements.
19. By way of email on October 2, 2023, Gilles' counsel advised that Gilles did not consent to the issuance of the proposed TPC. No explanation or reason was provided.
20. In order to preserve the limitation period, Eric issued a fresh action against the Coghlan defendants on October 19, 2023. The claim in the 2023 action advances the same cause of action as the proposed TPC.

21. On December 21, 2023, Gilles served a Trial Record and set the 2021 action down for trial. Eric and the corporation took the position that it was premature to set the action down for trial.
22. In October 2024, Eric and the corporation brought this motion seeking to consolidate the two actions. The request to schedule the motion was approved in writing by Associate Justice Fortier.
23. A case conference was subsequently held before me on October 16, 2024 where Eric and the corporation sought to set a timetable for the steps in the consolidation motion, and the Coghlan defendants sought to schedule a motion to strike the consolidation motion. As a Trial Management Conference had previously been scheduled for November 20, 2024, and there were no available motion dates prior to the TMC, I directed the parties to attend at TMC to get directions.
24. The parties attended at the TMC on November 20, 2024 before Justice Kaufman. Gilles requested trial dates. Eric and the corporation opposed the request on the basis that examinations for discovery had not been completed in the 2021 action and that this motion had been scheduled seeking to consolidate the two actions. Gilles took to the position that examination for discovery were not required in the 2021 action on account of the cross-examinations that occurred on the summary judgment motion. Given Gilles' age (76 years old) and the fact that the motion to consolidate may not be successful, Justice Kaufman found that it was appropriate to set trial dates for the 2021 action. Trial was set for 5 days beginning on May 11, 2026. Justice Kaufman also ordered that the defendants complete their examination for discovery by June 30, 2025. He also indicated that if the motion to consolidate was successful, the trial dates should be vacated.
25. The parties then exchanged pleadings in the 2023 action. In their defence, the Coghlan defendants plead that a succession plan was implemented in 2018 in which Gilles' common shares were retracted and exchanged for preferred shares, and that new common shares were issued to Eric who took control over the company. They allege that the weekly payments made to Gilles were presented as dividends and deny that Eric ever told them that the payments should reduce the amounts owing to Gilles pursuant to the redemption of

the Class “D” shares. They were aware that Eric had been the sole director since April 2018 and plead that they followed Eric’s instructions, but that he never told them to no longer take instructions from Gilles. They also plead that any documents signed by Gilles after the Estate Freeze were signed by Gilles in his capacity as Eric’s agent.

26. On cross-examination, Mr. Coghlan admitted that he only became aware of the estate freeze in 2021 despite the fact that he allegedly referred Gilles to his counsel, Mr. Liston. Despite the allegations in the defence, Mr. Coghlan’s evidence was that he wasn’t aware of the change of corporate structure following the estate freeze and he thought Gilles was still the director. He admitted being aware that the corporation was making weekly payments to Gilles, as well as payments towards personal expenses and that he recommended to the corporation to declare dividends. He continued to take instructions from Gilles and Gilles continues to sign the financial statements until 2021.
27. The Coghlan defendants then sought to bring a summary judgment motion to dismiss the 2023 action as statute-barred. Another case conference was held before me on February 12, 2025 to triage the summary judgment motion in accordance with the applicable practice direction. The Coghlan defendants sought to have their motion heard prior to the consolidation motion. I denied the summary judgment request for several reasons including that the outcome of the motion would likely turn on credibility issues in respect of the alleged oral instructions given to Mr. Coghlan and that expert evidence would be required. I also found the request to be inappropriate given that the consolidation motion had been timetabled in October 2024 without mention of the potential summary judgment motion.

The Law

28. The Court may consolidate proceedings pursuant to Rule 6.01 where it appears that the proceedings have a common question of law or fact, the relief claimed arises out of the same transaction or occurrence or series of transactions or occurrences, or for any other reason an order ought to be made under the rule. Instead of consolidation, the Court may also order that the actions be heard at the same time or one immediately after the other. Pursuant to subrule 6.01(2), the Court may also give directions as are just to avoid unnecessary costs or delay.

29. Pursuant to Rule 1.04, the rules are to be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding.
30. Section 138 of the *Courts of Justice Act* provides that multiplicity of legal proceedings shall be avoided.
31. While each case will turn on its own facts and the issues raised in the proceedings, where the applicable test is met Courts have ordered consolidation or that actions be tried one after the other in order to avoid the multiplicity of proceedings, the risk of contradictory findings and the wasting of judicial resources. Consolidation has also been ordered where it would be just to do so to minimize costs and avoid delays. ([1603878 Ontario Ltd. v St. Clair College of Applied Arts and Technology, 2014 ONSC 6107 at paras 12 and 13](#); [Alliance Shippers Inc. v Blue Line Distribution Ltd., 2011 ONSC 6958 at para 15](#)).
32. Once the initial threshold set out in rule 6.01 is met, the Courts have developed non-exhaustive factors to be assessed to determine whether consolidation should be ordered which consider the principles of Rule 1.04 and Section 138 of the *CJA*. These factors include: the extent to which the issues in each action are interwoven, whether the same damages are sought or whether damages overlap, whether the evidence or witnesses will overlap, whether the parties and/or the lawyers are the same, whether there is a risk of inconsistent findings, the complexity of each proceeding, the status of each action and whether the parties are likely to be advantaged or prejudiced if the actions are kept separate or tried together ([1014864 Ontario Limited v 1721789 Ontario Inc., 2010 ONSC 3306 at paras 17-18](#)).

Analysis

33. The first part of the test requires me to consider whether the criteria set out in Rule 6.01 are met.
34. Gilles' position is that while the two actions may have some facts in common, they do not have common *questions* of fact (or law). He also takes the position that the proceedings do

not arise from the same transactions. The Coghlan defendants take a similar position and submit that the terms of the agreement between Gilles and Eric are not relevant to the Coghlan action which, they submit, will turn on what instructions Coghlan received and whether he negligently performed his duties based on what was within his knowledge.

35. I do not agree with the respondents. I agree entirely with Eric and the corporation's position that both actions have common questions of fact. As remarked by the Court on two previous motions, one of the key issues to be determined in the 2021 action is the terms of the agreement between Gilles and Eric with respect to the Estate Freeze transaction, including whether or not there was an agreement for the reimbursement of Gilles' expenses and if so, whether those payments would be applied towards the share redemption. In order to determine whether the Coghlan defendants were negligent, the starting point will be to consider the terms of the transaction and any agreement between Gilles and Eric followed by ancillary questions including Mr. Coghlan's knowledge of the agreement/transaction, any advice he gave to Gilles, Eric and/or the corporation in respect of the agreement/transaction, who was authorized to instruct Mr. Coghlan following the agreement/transaction, whether it was negligent for him to accept Gilles' instructions as Eric's agent, and what specific instructions he received from Gilles or Eric.
36. In other words, whether or not the Coghlan defendants were negligent in preparing the financial statements, and/or whether they breached any fiduciary obligations towards the corporation by preferring Gilles' interests in the classification of the payments as dividends will depend, in part, on the Court's determination of the terms of any agreement between Gilles and Eric. Even if the Court finds that the agreement alleged by Eric did not exist, that will be a material question of fact that will affect the disposition of the 2023 action.
37. While Gilles denies that there was an agreement to apply payments received towards his share redemption, he conceded during his submissions that if such an agreement existed it *may* be relevant to the action against Coghlan but because it is not *certain* whether there is a common question of fact, this matter does not meet the test set out in Rule 6.01. However, the first branch of the test does not require the Court to make findings of fact which is what Gilles is asking me to do in order to accept his position.

38. In my view, it is clear that whether or not there was such an agreement is a common question of fact that the Court will need to determine in both actions. There are also other common questions of fact in the two actions, for example, who was authorized to instruct the Coghlan defendants.
39. I also find that the relief claimed in both actions arises out of the same transaction or series of transactions.
40. The relief claimed by Gilles in the 2021 action includes a mandatory order for redemption of the Class “D” shares, and in the alternative, damages for breach of contract and a declaration in oppression remedy. The relief claimed by Gilles arises from the Estate Freeze transaction and/or transactions entered into to accomplish the Estate Freeze.
41. The relief claimed by Eric and the corporation in the 2023 action against the Coghlan defendants include damages for negligence (and breach of fiduciary duty) as well as contribution and/or indemnity from the defendants in respect of any amounts Eric and the corporation may be liable in the 2021 action. The alleged negligence is pled to arise from various breaches by the Coghlan defendants following the Estate Freeze including that they continued to take instructions from Gilles and that the financial statements contained several errors, including the recording of dividends paid to Gilles in lieu of reporting the funds received as payments towards the share redemption pursuant to the alleged oral agreement.
42. The claim for contribution and indemnity in the 2023 action necessarily relates to relief claimed in the 2021 action. In addition, there is no doubt in reviewing the allegations made in the 2023 action that the damages for negligence relate to alleged breaches by the accountants arising from the Estate Freeze transaction and/or transactions entered into to accomplish the Estate Freeze. In the absence of the Estate Freeze, the basis for the 2023 action and the relief claimed therein would not exist.
43. Gilles and the Coghlan defendants glossed over subrule 6.01(1)(b), however, setting aside subparagraph (a) dealing with questions of fact or law in common, the fact that the relief claimed in both actions arises from the same transaction is sufficient in and of itself to meet this part of the test. Subparagraph (c) also sets out that the Court may make a consolidation

order “for any other reason”. As will appear below, when considering the factors established by caselaw to determine whether a Rule 6.01 order is just, there are a number of other reasons which warrant consolidation or the joinder of the two actions.

44. Gilles also resists the consolidation or joinder of the actions on the basis that the proper procedure was for Eric to bring a Third Party Claim and that Eric waited 15 months after Mr. Coghlan’s admissions on cross-examination to commence the 2023 action. This argument is not very compelling given that Gilles outright refused to consent to the issuance of the TPC without providing any reason or justification. I accept that in the face of Gilles’ refusal to consent, and out of precaution in respect of any limitation period, Eric opted to commence the 2023 action rather than bring a motion seeking leave to issue the TPC. Moreover, the 2023 action was issued within days of Gilles’ refusal to consent to the TPC.
45. As for any delays between Mr. Coghlan’s cross-examination and the issuance of the action, I note that during that timeframe the parties were dealing with Gilles’ summary judgment motion (which was not successful) followed by mandatory mediation in June 2023. I am not prepared to reconsider my previous decision that summary judgment is not appropriate in this matter; limitation period defences can be addressed at trial. In addition, in view of the similarities between the tests set out in Rules 29.01 and 6.01, it appears somewhat contradictory that Gilles now seems to concede that Eric was entitled to commence a TPC but resists this motion.
46. Contrary to the submissions of Gilles and the Coghlan defendants, I find that in considering the overall circumstances, the factors militate strongly in favour of a consolidation or joinder order in order to avoid a multiplicity of proceedings, make the most effective use of the Court’s resources and to proceed cost effectively for the parties.
47. As discussed above, the issues in the two actions are interwoven and relate to the parties’ rights, duties and obligations arising or resulting from the Estate Freeze including the damages claimed in both actions. Gilles, Eric and Mr. Coghlan are the main witnesses in both actions and there is overlap with Eric and the corporation being parties in both actions. Each of the parties will have the same counsel representing them whether they are parties

or witnesses.

48. There is a material risk of inconsistent findings of fact if the actions are not joined, including on the terms of any oral agreement. In addition, and as remarked by other Judges involved in preliminary motions in the actions, there are significant issues of credibility that will arise when assessing the evidence of each of Gilles, Eric and Mr. Coghlan and it is important, in my view, that the same Judge hear their evidence to avoid inconsistencies on assessments of credibility.
49. Despite the involvement of potential experts on the accountants' duty of care in the 2023 action, I do not find that either action is particularly more complex than the other.
50. Although the 2021 action has been set down for trial, examinations for discovery have not yet occurred in that action. That said, extensive cross-examinations were conducted on the summary judgment motion in that action, including cross-examinations of Mr. Coghlan as a witness. While productions have not been formally exchanged in the 2023 action, there would undoubtedly be overlap with the documents exchanged in the 2021 action and/or the materials exchanged for the summary judgment motion. Given the information gleaned from the cross-examinations and the other steps associated with the summary judgment motion, I do not think it would be unduly costly or time consuming to complete the outstanding steps in both actions to ready them for trial. I also do not agree that the addition of the experts' testimony in the 2023 action or any testimony by each of the parties to specific issues raised only in one of the actions would unduly lengthen a consolidated or joined trial or lengthen the existing trial by an additional two weeks as suggested by Gilles.
51. Gilles did not submit any evidence in support of his position that he would be prejudiced by the consolidation. He asks me to infer such prejudice based on his age and the resultant delays of the trial in the 2021 action if the relief is granted. I am not prepared to infer any material prejudice to Gilles. I also note that it was Gilles' decision to proceed with a summary judgment motion, therefore delaying and incurring costs in the 2021 action, despite Justice Doyle's warnings. Furthermore, I am not convinced that the trial of the 2021 action (scheduled for May 2026) needs to be adjourned. In my view, as discussed above, it should be entirely possible for the outstanding steps in both actions to be

completed within a year.

52. Most of Gilles' other concerns, such as his concern that fresh pleadings would be required, can be easily resolved by ordering that the actions be tried together or one after the other as opposed to ordering formal consolidation. In addition, Gilles does not need to participate in the completion of the next steps of the 2023 action, including the trial of that action. If he chooses to do so that is up to him.
53. Just as was the case in the *St. Clair* matter, the degree to which the parties participate in the litigation of any issues they feel are not germane to their action is up to them and any directions by the trial Judge. However, to avoid multiplicity of proceedings, it is important in my view that the same Judge conduct the trial of both action and that the parties be bound by rulings on common issues of fact and law. (see [1603878 Ontario Ltd. v St. Clair College of Applied Arts and Technology, 2014 ONSC 6107, at paras 12 and 13](#))
54. As I have alluded to above, rather than order formal consolidation, I think it would be quicker, easier and more cost effective to order that the actions be heard together or one immediately after the other subject to the trial Judge's directions. This will avoid the need for fresh or amended pleadings. Eric and the corporation's counsel indicated that his clients were prepared to complete the outstanding steps in the 2023 action on an expedited basis. New counsel for the Coghlan defendants should be in place by the release of this decision such that a timetable can be set.
55. Before vacating the existing trial dates for May 2026, I would like to convene a case conference with the parties to discuss a timetable that would see all outstanding steps completed by early 2026 with a view to either preserving the May trial date or rescheduling the trial by the end of 2026.
56. For reasons set out above, the motion is granted and the two actions shall be heard together or one after the other subject to the trial Judge's directions. As indicated above, the Coghlan defendants and the plaintiffs agreed to resolve the removal motion and the Coghlan defendants agreed to retain new counsel within 60 days from April 15, 2025 which means their new counsel will be in place by June 15th at the latest. I therefore direct the parties to contact the office of the Associate Judges by June 16, 2025 (by email at

Ottawa.associatejudges@ontario.ca) in order to schedule an urgent case conference before me to set a timetable for next steps as well as any ancillary orders such as common productions, examinations and to waive the deemed undertaking rule as between the two actions.

Costs of the Motion

57. With respect to costs of the motion, I did not request submissions on costs at the end of the hearing but each party uploaded their costs outline or bill of costs to Case Center. The plaintiffs were entirely successful on their motion except that I ordered that the actions be heard together or one after the other as opposed to formal consolidation.
58. On a partial indemnity basis, the plaintiffs sought costs in the amount of \$16,105.05. The costs outline does not contain particulars of the steps completed or the time spent on each, nor does it breakdown time spent on the consolidation motion as compared to the removal motion. Gilles seeks partial indemnity costs in the amount of \$8,725 with respect to the consolidation motion only (Gilles took no position on the removal motion). The costs sought by the Coghlan defendants come to \$10,039.71 inclusive of disbursements of \$1,610.25 for translation services which are not appropriate disbursements to be claimed.
59. As indicated above, the Coghlan defendants and the plaintiffs agreed to resolve the costs of the removal motion for \$3,000 payable within 30 days from April 15, 2025. Based on the factum submitted by the plaintiffs, an equal amount of time appears to have been spent on the removal motion and the consolidation motion. Halving the costs claimed by the plaintiffs ($\$16,105.05 / 2 = \$8,052.53$) also appears to align with the quantum of costs claimed by Gilles who was only involved in the consolidation motion.
60. In considering the factors set out in Rule 57, in particular the fact that the plaintiffs were successful on the motion, that if Gilles had consented to the issuance of the Third Party Claim this motion would not have been necessary, and the amount reasonably expected to be paid by the unsuccessful party, I find that costs in favour of the plaintiffs, payable within 30 days on a joint and several basis by Gilles and the Coghlan Defendants, in the amount of \$7,500 are appropriate.

Date : May 27, 2025

Associate Justice Perron

2025 ONSC 3180 (CanLI)