

CITATION: The Canada Trust Company et al. v. 1290976 Ontario Ltd. et al. 2026 ONSC 750
COURT FILE NO.: CV-25-90166
DATE: 20260206

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

The Canada Trust Company, trustee for
registered plans 14FR57-T, in the name of
Anthony Powell, and 4115008-S, in the
name of Joan Powell

Plaintiff

- and -

1290976 Ontario Ltd., 1255717 Ontario
Ltd., 1255707 Ontario Ltd, 13255595
Ontario Ltd., 775515 Ontario Limited,
Marino Rakovac and Glenrio Financing
Limited

Defendants

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) Richard Wellenreiter, for the Plaintiff
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) Daniel Richter, for the Defendants,
) 1290976 Ontario Ltd., 1255717 Ontario
) Ltd., 1255707 Ontario Ltd, 13255595
) Ontario Ltd., 775515 Ontario Limited
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) Anthony Powell, in person
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) Marino Rakovac, in person
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) No one appearing for the Defendant,
) Glenrio Financing Limited
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) **HEARD:** January 23, 2026
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REASONS FOR DECISION

Associate Justice J. Kriwetz

Nature of the Motions

[1] There are two motions before this Court.

[2] The first motion, made by Anthony Powell (“**Mr. Powell**”), is for:

1. leave to represent the Plaintiff, which is a corporation, pursuant to rule 15.01(2) of the *Rules of Civil Procedure*,
2. leave to amend the statement of claim by deleting the defendant, 13255595 Ontario Ltd. and substituting 1322295 Ontario Ltd, in the title of proceeding and throughout the statement of claim,
3. an order that this action and action number CV-18-65263 (the “**Related Action**”) be consolidated or, alternatively, tried together, and
4. an order validating the service of the statement of claim.

(hereafter this motion will be referred to as the “**Plaintiff’s Motion**”)

[3] The defendants have moved for the following relief, which I have set out as stated in their notice of motion:

1. *“Dismissing the Moving Parties’ motion dated 17 July 2025 for leave under r.15.01(2) and for consolidation,*
2. *In the alternative, if leave is granted,*

- a) *TCTC to appear by independent counsel within 15 days,*
 - b) *No enlargement of issues/parties without leave, and*
 - c) *Security for costs in an amount to be fixed by the Court (or “on terms the Court deems just”)*
3. *Refusing consolidation under r. 6.01; in the further alternative, order that the actions be tried together with safeguard (separate records/judgments/costs; firm April 2026 trial; r.50.13 case-management; timetable; backstop)*
 4. *Service & indispensable party order (r. 37.07): adjourn the Moving Parties’ motion unless and until they serve a complete motion record on all encumbrancers of record (including Glenrio Financing Ltd., CRA, and each party named in the Glenrio NOS schedule) and file proof of service*
 5. *Costs of the motion and cross-motion.”*

(hereafter this motion will be referred to as the “**Defendant’s Motion**”)

The Nature of the Proceedings

[4] Before addressing the motions, it is necessary to provide some brief background.

[5] Mr. Powell and his wife, Joan Powell (“**Ms. Powell**”) advanced their retirement savings to the defendants and took mortgage security over various pieces of real property, through the plaintiff, The Canada Trust Company (“**Canada Trust**”), which

holds the mortgages in its name as a bare trustee only, for the sole benefit of Mr. Powell and Ms. Powell (collectively, the “**Powells**”). The Powells are the plan holders of the Registered Retirement Investment Funds described in the title of proceeding (the “**Plans**”). Canada Trust has no financial interest in the outcome of these proceedings. The Powells are the only ones with any such interest, and they are the sole beneficiaries of the relief being sought.

[6] Under the terms of their arrangement with Canada Trust, if mortgage enforcement proceedings are undertaken, the Powells are solely responsible for retaining, instructing and paying counsel of their choice to do so. They are also required to indemnify Canada Trust for any costs it incurs in the proceedings.

[7] This action was commenced to enforce the mortgages, which are alleged to be in default. Mr. Wellenreiter was initially retained by the Powells to represent the plaintiff, but the Powells can no longer afford to pay counsel.

[8] The Powells have been named as defendants in the Related Action. The plaintiffs in the Related Action are the defendants in this action, and the claim in the Related Action relates to the same mortgages which are the subject of this action.

[9] Mr. Powell was called to the Bar in Ontario in 1975 and practiced law until his retirement in 2019. The majority of his practice was litigation. He conducted trials before the Ontario Superior Court and is familiar with litigation practice and procedure.

[10] I note that Glenrio Financing Limited has been named as a defendant in this action as a subsequent encumbrancer only. No one appeared at the hearing of these motions on its behalf.

The Plaintiff's Motion

Matters on Consent

[11] During the hearing, the defendants advised that they consented to the following relief sought in the Plaintiff's Motion.

[12] First, the defendants consented to the amendment of the title of proceedings and the statement of claim substituting 1322295 Ontario Ltd. in place of 13255595 Ontario Ltd. throughout. Therefore, order to go accordingly.

[13] Second, the defendants acknowledged having been served with the statement of claim on November 4, 2025. The defendants advised that they intend to deliver a statement of defence. Therefore, as agreed by the parties, order to go validating service of the statement of claim upon the defendants as of November 4, 2025, and a further order is issued that the defendants shall have 40 days from the hearing date (i.e. January 23, 2026) to deliver their statement of defence.

[14] Finally, at the hearing Mr. Powell advised the Court that he was no longer seeking a consolidation order, but the alternative relief that this action and the Related Action be tried together. The defendants advised the Court that they consent to both actions be

tried together. Therefore, order to go that this action and the related action be tried together, or one after the other, as the trial judge directs.

Leave Allowing Mr. Powell to Represent the Plaintiff

[15] The only part of the relief sought in the Plaintiff's Motion which remained opposed was the request that Mr. Powell be granted leave to represent Canada Trust, which is the named plaintiff in this action.

[16] Mr. Wellenreiter advised the Court that he consents to an order granting such leave to Mr. Powell. He also filed a written and signed consent to that effect. The said document also confirmed that Mr. Wellenreiter takes no position regarding the consolidation or the trial together of the two actions.

[17] Canada Trust, through its corporate counsel, filed a signed document confirming that it does not oppose an order granting Mr. Powell leave to represent Canada Trust in this proceeding, nor does it oppose the consolidation or trial together of the two actions.

[18] Ms. Powell also filed a signed consent to an order granting leave to Mr. Powell to represent Canada Trust in this proceeding, and to the consolidation or trial together of the actions. Ms. Powell also granted a power of attorney to Mr. Powell authorising him to deal with the Plans on her behalf.

[19] In addition to Mr. Powell's experience as a former practicing lawyer, as noted above, it was he who not only prepared the Plaintiff's Motion documents, but he also prepared and filed a detailed and cogent factum and a supplementary factum, citing

relevant authorities. Mr. Powell also made cogent submissions at the hearing and provided a written copy of his submissions to the Court after the hearing.

[20] The defendant, Marino Rakovac (“**Mr. Rakovac**”) represents himself in this action. The corporate defendants are represented by counsel. Though counsel for the corporate defendants made brief submissions on this point, most submissions at the hearing were made by Mr. Rakovac. It appears that Mr. Rakovac may have also prepared the Defendants’ Motion material and the defendants’ factum. I also invited Mr. Rakovac to provide me with a written copy of his submissions, if he wished to do so, but I have not received them.

[21] None of the authorities which were referred to me are directly on point with the facts in this case.

[22] Rule 15.01(1) states that a party who is acting in a representative capacity must be represented by a lawyer.

[23] Rule 15.02(2) states that a party to a proceeding which is a corporation shall be represented by a lawyer, except with leave of the Court.

[24] In this case, Canada Trust commenced this action as a trustee, as it is entitled to do pursuant to rule 9.01(1). It is, therefore, acting in a representative capacity and it is also a corporation. Therefore, under rules 15.01(1) and (2), it must be represented by a lawyer. In the case of a corporation, the Court may grant leave under subrule 15.02(2) to someone other than a lawyer to represent the corporation, but there is no similar leave

provision in rule 15.01(1). Therefore, for Mr. Powell to succeed, the application of rule 15.01(1) must be dispensed with. and then leave must also be granted under rule 15.01(2).

[25] Mr. Powell submits that I may rely upon rule 2.03, which gives the Court the discretion to dispense with compliance with any rule at any time *“only where and as necessary in the interest of justice”*, to dispense with the requirements of rule 15.01(1). He cited *Scarangella v. Oakville Trafalgar Memorial Hospital*, 2024 ONSC 5518, where the Court noted at paragraph 9 that there were certain circumstances where the Court could do so.

[26] One of the cases referred to in *Scarangella* was *Selkirk v. Trillium Gift of Life Network*, 2022 ONCA 478, leave to appeal denied 2023 CanLII 19732 (SCC). In that case, the appellant appeared before the Court in her personal capacity and as the representative of her deceased spouse’s estate. One of the issues the Court considered was whether the appellant had standing to appear on the appeal. The Court noted that, although technically, the appellant’s purported representation of her late spouse’s estate *“fell afoul”* of rules 9.01 and 15.01, the Court did not consider it to be a problem in that case because, (a) no objection was raised by the respondents, (b) the principal rationale for the rules – *“ a non-lawyer should not act on behalf of beneficiaries when seeking money on their own behalf – is not engaged in this case”*, and (c) the Court noted *“crucially, (the appellant’s) representation of the Estate on this appeal, through her factum, supporting material and oral argument, was of high quality indeed.”* Therefore,

the Court applied rule 2.03 and dispensed with the strict compliance with the rules because it was “*necessary in the interest of justice*” to do so [see: paras, 11 – 15].

[27] *Scarangella* also referred to *Preiano v. Cirillo*, 2024 ONCA 206. That case involved a failed real estate transaction in which the appellants, an estate and a party under a disability, were purported to be represented by the daughter of the deceased and the party under a disability. At trial, the judge found that the daughter did not have standing to represent her late father’s estate and her mother without a lawyer and struck the statement of defence. On the issue of standing, the Court of Appeal stated that the trial judge had the discretion under rule 2.03 to dispense with compliance with rule 15.01(1), and his failure to do so, which caused him to strike the defence, amounted to procedural unfairness.

[28] With respect to granting leave for a corporation to be represented by a non-lawyer under rule 15.01(2), Mr. Powell referred to *GlycoBioSciences Inc. v. industria Farmaceutica Andromaco S.A. de C.V. (Andromaco)*, 2024 ONCA 481, wherein, the Court of Appeal noted that granting leave is exceptional and “*discretionary but cannot be granted in a manner that normalizes what the rule otherwise prohibits*” [at para. 6].

[29] At paragraphs 7 and 8 of *GlycoBioSciences*, the Court stated,

“The rationale for the rule requiring representation by a lawyer is plain. A non-lawyer who is closely tied to the corporation granted leave under r. 15.01(2) 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, contrary to s. 26.1(1) of the Law Society Act, R.S.O. 1990, c. L.8. 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: Leisure Farm Construction Limited v. Dalew Farms Inc. et.al., 2021 ONSC 105 at paras. 12-15. 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, as discussed below.

There is little authority concerning r. 15.01(2) from this court. It appears that individuals have sometimes been permitted to act because their participation was not contested, or in some cases the rule was overlooked. I do not intend to canvas the caselaw. It suffices to say that the decision to permit a non-lawyer to represent a corporation is a discretionary

decision that must be made having regard to all of the

circumstances in a particular case.” (emphasis added)

[30] Mr. Powell cited an example of a case where the non-lawyer principal of a closely held private corporation was granted leave to represent it. He also cited cases where leave was granted to an applicant where the applicant and his spouse’s interest were aligned with those of the corporate party, of which they were the sole principals.

[31] The defendants’ factum referred to *Almos Gold Inc. v. Sterling O&G International Corp.*, 2023 ONSC 7153, where at paragraph 4, the Court stated,

“Granting leave for a corporation to be represented by a non-lawyer is a discretionary decision. Each case turns on its facts, but case law has established a number of factors to be considered in these motions. As set out in Extend-A-Call Inc. v. Granovski2009 CanLII 33047 ONSC, at para. 19, and subsequent cases, those factors include the following:

(a) whether the proposed representative has been duly authorized by the corporation to act as its legal representative;

(b) whether the proposed representative has a connection to the corporation;

(c) the structure of the corporation in terms of shareholders, officers and directors and whether it is a closely held corporation;

(d) whether the interests of shareholders, officers, directors, employees, creditors and other potential stakeholders are adequately protected by the granting of leave;

(e) whether the proposed representative is reasonably capable of comprehending the issues in the litigation and advocating on behalf of the corporation; and

(f) whether the corporation is financially capable of retaining a lawyer.”

[32] In my view, the cases where non-lawyers have been granted leave to represent corporations which they control are distinguishable from the facts in this case because Canada Trust is not a closely held private corporation controlled only by the Powells. Therefore, some of the factors considered in such cases are not, in my view, applicable in this case. Nevertheless, there are several relevant factors in this case which are to be considered, which I will describe below.

[33] At the hearing, Mr. Rakovac submitted that the issues in this case were too complex for a non-lawyer to represent the plaintiff. In his factum, he also submits that there are public policy considerations which weigh against granting leave to Mr. Powell. In particular, he submits that granting leave would permit the unauthorised practice of law and that *“a non-party lay agent typically faces not personal cost risk, undermining procedural integrity and deterrence”*. Furthermore, in his factum, Mr. Rakovac argues that no corporate authority has been granted, that it would create a conflict of interest, that it

would affect the integrity of the title process, that there is no evidence that Mr. Powell cannot retain counsel, and that the interests of justice require the plaintiff to be represented by counsel. In his oral submissions, Mr. Rakovac also stated that, if leave was granted, it should be subject to the conditions that, (a) Mr. Powell's authority be limited to representing the plaintiff in its capacity as trustee, and (b) if any settlement was reached in the proceedings, that the trustee's approval be required.

[34] I do not accept the defendants' submissions.

[35] For the reasons noted below, I do not believe that the issues in the proceeding are too complex for Mr. Powell to handle. Furthermore, because the Powells are required to indemnify Canada Trust for any costs incurred, there should be no concerns about them not facing a personal cost risk. Mr. Powell has put forth evidence that he and Ms. Powell cannot afford to continue to pay counsel to represent the plaintiff. Also, Canada Trust itself does not oppose Mr. Powell's request. The other concerns raised by the defendants are, in my view, without merit.

[36] As for the defendants' submissions that, if this Court grants leave to Mr. Powell as requested, I should impose the terms requested by the defendants, I have not been referred to any authorities where any such conditions have been imposed after leave has been granted, nor do I think that such an order is appropriate in any event.

[37] In my view, having considered all the circumstances, including,

1. that the named plaintiff, Canada Trust, is a bare trustee which merely holds the mortgages in its name for the sole benefit of the Powells, and has no financial interest in the outcome of these proceedings,
2. that the Powells are the sole beneficiaries of the trust agreement made between them and Canada Trust,
3. that the Powells are the only ones who have a financial interest in these proceedings,
4. that Powells are solely responsible for retaining, instructing and paying for counsel to commence and prosecute these proceedings,
5. that the Powells are responsible for indemnifying Canada Trust for any costs it may occur under these proceedings,
6. that the Powells can no longer afford to pay counsel to represent the plaintiff,
7. that Canada Trust does not oppose an order granting Mr. Powell leave to represent Canada Trust in these proceedings
8. that the current counsel of record for the plaintiff consents to the relief requested,
9. that Ms. Powell consents to the relief requested and has given her power of attorney to Mr. Powell to deal with matters regarding the Plans on her behalf,
and

10. that Mr. Powell is a retired lawyer, with obvious litigation skills, who has clearly demonstrated that he has a good understanding of the issues in this case and is quite capable of dealing with them,

it is appropriate and necessary in the interests of justice for me to exercise my discretion in applying rule 2.03 to dispense with the requirement of rule 15.01(1) and to also grant leave pursuant to rule 15.01(2), thereby allowing Mr. Powell to represent Canada Trust as plaintiff in these proceedings.

The Defendants' Motion

[38] Having granted leave to Mr. Powell to represent the plaintiff and given the parties consent to the hearing together of this action and the Related Action, the relief requested as set out in paragraphs 1 and 3 of the defendants' notice of motion are dismissed.

[39] Paragraph 2 of the defendants notice of motion requested alternate relief, if leave was granted. The alternate relief set out in the notice of motion is different than what was presented to the Court during the defendants' submissions and included a request for security for costs. As noted above, having granted leave to Mr. Powell to represent the plaintiff, I do not think it appropriate to impose any of the conditions requested by the defendants. Of particular note, on the record before this Court, there is no basis on which security for costs should be ordered. Therefore, this part of the Defendants' Motion is also dismissed.

[40] There is also no basis to adjourn the Plaintiff's Motion as requested in paragraph 4 of the defendants' motion. Therefore, I also dismiss the balance of the Defendants' Motion.

Costs

[41] Neither party made submissions on costs at the hearing. If the parties wish to make any such submissions, they may do so by sending written submissions, not to exceed 3 (three) pages in length, by February 16, 2026. The submissions should be forwarded by e-mail to the Hamilton Trial Co-ordinator's office to my attention.

Associate Justice J. Kriwetz

Released: February 6, 2026

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Defendants

REASONS FOR DECISION

Associate Justice Kriwetz

Released: February 6, 2026