

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20111209**

**Docket: A-373-11**

**Citation: 2011 FCA 345**

**Present: PELLETIER J.A.**

**BETWEEN:**

**TPG TECHNOLOGY CONSULTING LTD.**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on December 9, 2011.

**REASONS FOR ORDER BY:**

**PELLETIER J.A.**

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**REASONS FOR ORDER**

**PELLETIER J.A.**

[1] The Court has before it a number of Notices of Motion, specifically:

- 1- A motion by the appellant, represented by Gowling Lafleur Henderson LLP, for an order settling the contents of the appeal book.
- 2- A motion by Gowling Lafleur Henderson LLP to be removed as counsel of record and requesting an extension of time to serve and file the agreement as to contents of the appeal book.

- 3- A motion by the appellant TPG Technology Consulting Ltd. for an order pursuant to Rule 120 of the Federal Courts Rules allowing Mr. Donald Powell to represent it on this appeal together with a request for an oral hearing of the motion.

[2] While this is not the order in which these motions were filed in the Registry, it is more convenient to deal with them in this order so that the matters raised by Gowling Lafleur Henderson LLP can be dealt with before they are removed as counsel of record.

[3] The parties are in agreement as to the contents of the appeal book, as evidenced by their respective memoranda. There will therefore be an order settling the contents of the appeal book as set out in the Index to the Appellant's reply to the motion to settle the contents of the appeal book.

[4] The request for an extension of time to file the agreement as to the contents of the appeal book will be treated as an extension of time to bring a motion for an order settling the contents of the appeal book. In the particular circumstances of this case, the motion for an extension of time is granted.

[5] The motion for an order removing Gowling Henderson Lafleur LLP as solicitors of record is granted.

[6] The last matter to be dealt with is the motion seeking leave to have Donald Powell act as the representative of the appellant, a corporation. Mr. Powell asks that this motion be heard orally.

[7] While the Rules provide that motions will only be dealt with in writing under Rule 369 upon request, the long-standing practice of the Federal Court of Appeal is that motions are dealt with in writing unless the Court orders otherwise. This practice arises from the small number of judges on the Federal Court of Appeal and the economies inherent in dealing with motions in writing rather than orally. Having read the material submitted in support of the motion to authorize Mr. Powell to act as the appellant's representative, I do not find that there are any special circumstances which would justify an oral hearing. The Court is able to adequately deal with the motion on the basis of the written material. The request for an oral hearing of the motion is denied.

[8] The general rule is that corporations must be represented by solicitor: see Rule 120, *Federal Courts Rules*, SOR/98-106, and (the Rules). There could be many reasons for such a rule but one which is particularly compelling is that those who have received the benefits of incorporation in the form of tax planning opportunities, immunity from liability in tort etc. should also bear the costs of incorporation, one of which is that the corporation must be represented before the courts by a solicitor. This is particularly so in a case where the corporation is the plaintiff. Where a corporation is sued, it has little to say about whether it will be involved in litigation and incur the costs associated with litigation. But where the corporation is the plaintiff, it has made a conscious choice to embark upon litigation, a decision which will force the defendants in its action to incur legal costs defending themselves. It is only reasonable that the corporate plaintiff should not lightly be able to avoid incurring those costs itself.

[9] Rule 120 provides that “in special circumstances”, the Court may authorize an officer of a corporation to represent the corporation for purposes of litigation. “Special circumstances” have been held to include the proven inability to pay for counsel: see *S.A.R. Group Relocation Inc. Canada (Attorney General)*, 2002 FCA 99, [2002] F.C.J. No. 367. The onus is on the party pleading impecuniosity to put evidence of his/her circumstances before the Court. That has not been done here. In fact, the appellant has not even alleged impecuniosity.

[10] I might add that, in the case of corporations, impecuniosity is a double-edged sword. Rule 416 provides that where the plaintiff is a corporation and there is reason to believe that it would have insufficient assets to pay the defendant’s costs if ordered to do so, the corporation may be ordered to give security for costs. As a result, a corporation should consider its position carefully before pleading that it should be relieved of the obligation of being represented by a solicitor.

[11] Since no special circumstances have been shown, I would dismiss the motion to authorize Mr. Powell to act as the appellant’s representative.

"J.D. Denis Pelletier"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-373-11

**STYLE OF CAUSE:**  
**TPG TECHNOLOGY CONSULTING LTD v. HER MAJESTY THE QUEEN**

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** J.A. PELLETIER

**DATED:** December 9, 2011

**WRITTEN REPRESENTATIONS BY:**

Martha J. Savoy,  
Phuong T.V. Ngo,  
Ronald D. Lunau

FOR THE APPELLANT

Brian Harvey

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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