

SUPREME COURT OF NOVA SCOTIA

Citation: Milburn v. Growthworks Canadian Fund Ltd., 2013 NSSC 69

Date: 20130220

Docket: Syd No. 296202

Registry: Halifax

Between:

Douglas Milburn, Ian Campbell, John Campbell, Norm Carmichael, Marilyn Gillis, Gerry Haberer, Michael Milburn, Thomas Murphy, John Ritter, Armin Schabel, Frances Smith, Herman Koza, Roy MacNeil, Allan MacMillan, Michelle Milburn, Milburn Family Trust, A. Riberio Holdings, Karin Allen, Pat Archer, Mortimer Brown, Elizabeth Carmichael, Dan Chobotiuk, Sion Jennings, Elizabeth Lynk, Eleanor Mack, Christopher Milburn, Colin Noble, Malcolm Noble, Alex Riberio, Kevin Schabel, Tom Schneider, Hanna Shaheen, Maja-Lisa Thomson, Jon Woeller, Kausar Mian, Donald Archer and Norton Campbell

Plaintiffs

v.

GrowthWorks Canadian Fund Ltd., Englefield House No. 4 Inc., Walsingham Fund, Richard Black, Alisha Hirsch, Scott Pelton, Tom Saunders, John Gardner and Vince Mifsud

Defendants

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Judge: The Honourable Justice Michael J. Wood

Heard: February 14, 2013 (in Chambers), in Halifax, Nova Scotia

Decision: February 20, 2013 (Orally)

Written Release of Decision: February 27, 2013

Subject: Civil Procedure - Directions for Disclosure - CPR 15.07
Representative Proceedings - CPR 68.08

Summary: Individual plaintiffs made a motion to appoint a representative plaintiff under CPR 68.08. Primary purpose was to avoid having to produce individual affidavits disclosing documents. Alternatively, they sought directions to avoid individual affidavits by having a consolidated disclosure affidavit.

Issue: Should a representative plaintiff be appointed?
Should the plaintiffs be exempt from providing individual affidavits disclosing documents?

Result: In the circumstances, the Court was not prepared to appoint a representative under CPR 68.08. The motion was motivated by desire to avoid individual disclosure. The plaintiffs were not an appropriate representative group and there were issues with the adequacy of notice.

The plaintiffs had already disclosed documents in their possession and control. The burden of producing individual affidavits was not shown to be significant in the context of the allegations in this proceeding. Motion for directions dismissed.

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QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***