



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Trudeau v. Cornick*, 2026 NLSC 89

Date: July 17, 2026

Docket: 202401G4651

2026 NLSC 89 (CanLII)

BETWEEN:

GILBERT TRUDEAU

FIRST APPLICANT

AND:

R.C.M. MODULAIRE INC.

SECOND APPLICANT

AND:

PETER CORNICK

FIRST RESPONDENT

AND:

ALEC SNOW

SECOND RESPONDENT

AND:

**TRUE NORTH PROPERTY
MANAGEMENT LIMITED**

THIRD RESPONDENT

Before: Justice Justin S.C. Mellor

Place of Hearing:

St. John's, Newfoundland and Labrador

Date of Hearing:

February 20, 2026

Appearances:

William T. Cahill
Morgan E. Chafe

Appearing on behalf of the Applicants
Appearing on behalf of the Respondents

Authorities Cited:

CASES CONSIDERED: *Tremblett v. S.C.B Fisheries Ltd.* (1993), 363 A.P.R. 139, 115 Nfld. & P.E.I.R. 139 (Nfld. S.C.(T.D.)); *Barrett v. Ballott*, 2019 NLSC 82; *F.H. v. McDougall*, 2008 SCC 53; *Bertram v. Fundy Tidal Inc.*, 2018 NSSC 165; *Valgardson v. Valgardson*, 2012 ABCA 124; 2538520 *Ontario Ltd. v. Eastern Platinum Limited*, 2020 BCCA 313; 52182 *Newfoundland and Labrador Limited v. Power*, 2026 NLSC 189; *Budd v. Bertram*, 2018 NSCA 95; *Jahnke v. Johnson*, 2018 SKCA 59; 2538520 *Ontario Ltd. v. Eastern Platinum Limited*, 2020 BCCA 313

STATUTES CONSIDERED: *Corporations Act*, R.S.N.L. 1990, c. C-36

RULES CONSIDERED: *Rules of the Supreme Court*, 1986, S.N.L. 1986, c. 42, Sch. D

REASONS FOR JUDGMENT

MELLOR, J.:

OVERVIEW

[1] This is an application by Gilbert Trudeau and R.C.M. Modulaire Inc. to bring a derivative action on behalf of GAPCO Enterprises Limited against two of GAPCO's directors for breach of fiduciary duty.

[2] GAPCO owns two apartment buildings in Labrador City. It has three shareholders: Eric Snow, Peter Cornick, and Gilbert Trudeau. Each one owns a one-third interest in the corporation, and they are parties to a unanimous shareholders' agreement.

[3] Mr. Trudeau and R.C.M. allege that GAPCO made undocumented and unauthorized payments to True North Property Management Limited in the form of management fees and interest payments on inter-company loans. They claim that these payments constitute self-dealing because True North is allegedly owned by Snow and Cornick.

[4] After considering the affidavit evidence, I have determined that Mr. Trudeau has met the requirements for a derivative action in section 369(2) of the *Corporations Act*, R.S.N.L. 1990, c. C-36. He is granted leave to commence an action on behalf of GAPCO against Snow and Cornick for breach of fiduciary duty.

ISSUES

- 1. Are Gilbert Trudeau and R.C.M. Modulaire Inc. “complainants” under the *Corporations Act* for the purpose of commencing a derivative action?**
- 2. Has Mr. Trudeau met the test for commencing a derivative action under section 369(2) of the *Corporations Act*?**

ANALYSIS

- 1. Are Gilbert Trudeau and R.C.M. Modulaire Inc. “complainants” under the *Corporations Act* for the purpose of commencing a derivative action?**

[5] To commence a derivative action on behalf of a corporation, a person must be a “complainant” within the meaning of section 368(b) of the *Act*. The term is defined in the *Act* as including both beneficial owners and directors. Mr. Trudeau is a director of GAPCO and is therefore a “complainant.”

[6] While Mr. Trudeau meets the statutory definition, the same cannot be said about R.C.M. The unanimous shareholders' agreement ambiguously states that one of the shareholders is a corporation "represented by its President," Mr. Trudeau. Nowhere in the Agreement is R.C.M. specifically named as a shareholder.

[7] In the absence of evidence proving that R.C.M. is a GAPCO shareholder, there is no basis to find that it is a "complainant" under the *Act*.

2. Has Mr. Trudeau met the test for commencing a derivative action under section 369(2) of the *Corporations Act*?

[8] In addition to establishing that he is a complainant, Mr. Trudeau must also satisfy the requirements of the three-part test in section 369(2) of the *Act*. Under this section, he must prove that he gave GAPCO's directors reasonable notice, that he is bringing the action in good faith, and that the action is in GAPCO's interests.

Reasonable Notice

[9] On 31 October 2023, almost ten months before filing and serving this application, Mr. Trudeau and R.C.M. put the directors of GAPCO on notice that should an action not be commenced against Cornick, Snow and True North, they would apply for leave to file a derivative action. No action was brought against any of them.

[10] The Respondents concede that the Applicants have provided reasonable notice.

Good Faith

[11] In addition to giving reasonable notice, Mr. Trudeau must also prove that he is acting in good faith. Some of the older case laws suggest that the good faith requirement is subject to an elevated standard of proof. In *Tremblett v. S.C.B*

Fisheries Ltd. (1993), 363 A.P.R. 139, 115 Nfld. & P.E.I.R 139 (Nfld. S.C.(T.D.)), at para. 82, Justice Puddester held that the onus on the applicant to establish good faith was “substantial.” However, in *Barrett v. Ballott*, 2019 NLSC 82, Justice Marshall found that the characterization of the standard of proof as either low or “substantial” was not particularly helpful. While *Tremblett* could be interpreted as supporting an elevated standard, it was decided prior to the Supreme Court of Canada’s decision in *F.H. v. McDougall*, 2008 SCC 53. In that case, at paragraph 40, Justice Rothstein definitively stated, “... in Canada, ... there is only one civil standard of proof at common law and that is on a balance of probabilities.”

[12] In *Barrett*, Justice Marshall adopted a subjective/objective approach to good faith from the Nova Scotia case of *Bertram v. Fundy Tidal Inc.*, 2018 NSSC 165. At paragraph 68, Justice Marshall stated that the “... Court must determine whether the evidence indicates that Mr. Barrett believes the claim has merit (i.e. the subjective element of good faith); and whether there is an arguable case for trial, which is neither frivolous nor vexatious (i.e. the objective element of good faith).”

[13] A similar approach was taken by the Alberta Court of Appeal in *Valgardson v. Valgardson*, 2012 ABCA 124, at para. 20, where the Court explained:

The subjective aspect requires that the applicant believes the proposed derivative action has merit. This guards against actions spurned by self-interest or private vendetta. But even where the applicant believes that the proposed action has merit, the court must still consider whether objectively viewed the action is not frivolous and vexatious.

[14] I will now examine the facts of this case in light of the subjective and objective elements of good faith.

Subjective Component

[15] A determination of good faith is a “finding of fact ... based on inferences drawn from the record”; (2538520 *Ontario Ltd. v. Eastern Platinum Limited*, 2020 BCCA 313, at para. 33). There are two affidavits before this Court; one from Darren

Snow who is a director of GAPCO, and another from Mr. Trudeau. Neither contains evidence suggesting that Mr. Trudeau's action is driven by an ulterior motive, or that this application is being brought for an improper purpose. However, the Respondents do not bear the onus proving bad faith; rather the onus is on Mr. Trudeau to establish that he is in fact acting in good faith.

[16] Mr. Trudeau's evidence is that he believes that GAPCO has made unauthorized payments to True North in relation to loans and management fees. He asserts that the application is brought in "good faith" because it is his "understanding that GAPCO is entitled to reimbursement of funds from Cornick, Snow and/or True North." In his affidavit, he states that despite repeated attempts, he has not succeeded in obtaining documentation supporting the payments to True North. Mr. Trudeau was not cross-examined on his affidavit.

[17] Despite the lack of contradictory evidence, Snow and Cornick maintain that Trudeau is acting in bad faith. They assert that the application is driven by Mr. Trudeau's alleged refusal to make a shareholder contribution. They claim "[t]he Applicants are more motivated by advancing their own interests and attempting to achieve tactical advantages against the Respondents than they are in potential return to GAPCO." While there may be an issue over Mr. Trudeau making shareholder contributions, it does not automatically follow that any attempt by Trudeau to recover unauthorized payments made on GAPCO's behalf is motivated by bad faith.

[18] I have no doubt that as a shareholder, Mr. Trudeau may benefit from GAPCO succeeding in an action against the Respondents. However, the existence of a potential benefit to Mr. Trudeau does not equate to bad faith. If that was the case, no shareholder would be able to commence a derivative action.

[19] Based on the evidence before me, I am satisfied that the subjective component of the good faith requirement is met.

Objective Component

[20] The objective component of good faith requires an applicant to demonstrate an arguable case. In *Valgardson*, at paragraph 22, the Alberta Court of Appeal stated: “[t]he primary concern when determining the existence of good faith is whether the proposed derivative action is frivolous and vexatious.” A “frivolous” claim is one that is “plainly non-justiciable, irrational, or so insufficient on its face such that it has no reasonable prospect of success”; (52182 *Newfoundland and Labrador Limited v. Power*, 2026 NLSC 189, at para.17)

[21] Mr. Trudeau’s claim that Snow and Cornick breached their fiduciary duty to GAPCO is neither frivolous nor vexatious. He has put forward a legal and evidentiary basis on which an argument of breach of fiduciary duty could reasonably be made. Trudeau’s affidavit attaches GAPCO’s Unaudited Financial Statements establishing that it has been paying True North management fees as well as interest on an alleged inter-company loan. Mr. Trudeau has also submitted the Agreement that states, “*All decisions* with regards to GAPCO shall require the unanimous vote of the three shareholders in order to be duly adopted.” [emphasis added] That agreement also restricts GAPCO’s directors from making “any decision other than an administrative decision taken in the ordinary course of the business” without unanimous shareholder approval. Finally, Mr. Trudeau’s affidavit indicates that he has repeatedly requested documentation to support the transactions, but none has been forthcoming. There is nothing to suggest that Mr. Trudeau’s proposed claim is in any way frivolous and vexatious.

[22] The Respondents may well have valid defences against Mr. Trudeau’s claim. Perhaps there are shareholder resolutions supporting the loans, and documentation supporting the payment of management fees to True North. But these are matters for trial.

[23] Based on the evidence submitted, I must conclude that Mr. Trudeau has met both components of the good faith requirement.

Interests of the Corporation

[24] The third requirement under section 369(2) is that the action “*appears* to be in the interests of the corporation,” not that *it is* in the interests of the company; (*Budd v. Bertram*, 2018 NSCA 95, at para. 35 [emphasis added]). As Richards, C.J.S explained in *Jahnke v. Johnson*, 2018 SKCA 59: “[i]t is enough if the applicant establishes that the application is *prima facie* in the interests of the corporation.”

[25] To determine whether a proposed action is in the *prima facie* interests of the corporation, a court must assess the strength of the action. This means that an applicant must have a proper cause of action and some evidence establishing that the “proposed claim has a reasonable prospect of success”; (2538520 *Ontario Ltd. v. Eastern Platinum Limited*, 2020 BCCA 313, at para. 36). Bringing an action that will inevitably fail is certainly not in a corporation’s interests.

[26] I have already determined that Mr. Trudeau’s proposed claim is neither frivolous nor vexatious. In my analysis of the good faith requirement, I found that he has put forth a legal and evidentiary basis on which the proposed claim could succeed. I have no doubt that there is an arguable case with a reasonable prospect of success.

[27] While the strength of the case is a key consideration at this stage, it is not the only one (*Jahnke v. Johnson*, at para. 68; *Budd v. Bertram*, at para. 45; *Barrett*, at para. 116). If the cost of the action exceeds the potential damages, then it would clearly not be in the corporation’s interests. To put it in colloquial terms, the juice must be worth the squeeze.

[28] Snow and Cornick argue that “prosecuting the claim... for alleged breaches of the fiduciary duty they owe to GAPCO as directors will cost significantly more than what GAPCO might yield from any such claim.” They point out that a failure to pay True North could result in it commencing an action against GAPCO or withdrawing its services, which would put GAPCO in breach of its contract with IOC.

[29] Without any evidence, this is pure speculation. What True North may do in response to the derivative action cannot be determined at this stage, and it is certainly not possible to determine if that response will breach the contract with IOC.

[30] The Applicants also argue that the interest paid on the loans cannot be recovered because “Cornick and Snow were acting in the best interest of GAPCO,” and that “GAPCO was contractually obligated to make those payments per the USA.” The question of whether Snow and Cornick were acting in GAPCO’s interests is the very issue to be decided in the derivative action.

[31] The amount of money paid by GAPCO to True North is not insignificant. The evidence is that in the period 2020 to 2023, \$3,023,639 was paid as interest on the alleged inter-company loans and advances. As of 30 September 2023, GAPCO had a listed liability of \$11,160,248. These are not insignificant amounts of money. Recovery of even a small percentage of the payments would make the litigation a worthwhile pursuit.

[32] I am satisfied that commencing an action against Snow, Cornick and True North is in the interests of GAPCO.

DISPOSITION

[33] Pursuant to section 369 of the *Act*, Mr. Trudeau is granted leave to commence a derivative action on behalf of GAPCO against Alec Snow, Peter Cornick and True North. Mr. Trudeau shall have his costs in accordance with Column 3 of the Scale of Costs in the Appendix of Rule 55 of *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D.

JUSTIN S.C. MELLOR
Justice