

Date: 20240322
Docket: CI 23-01-40408
(Winnipeg Centre)
Indexed as: Frontline Freight Systems v.
Manitoba (Director of Companies Office)
Cited as: 2024 MBKB 49

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

4885814 MANITOBA LTD. (C.O.B. AS FRONTLINE FREIGHT SYSTEMS),)	<u>Jared M. Wheeler</u>
)	<u>Evan F.P. Podaima</u>
)	for the applicant
applicant,)	
- and -)	<u>Tamara D. Edkins</u>
)	for the respondent
THE DIRECTOR OF THE COMPANIES OFFICE (MANITOBA),)	
)	
)	JUDGMENT DELIVERED:
respondent.)	March 22, 2024

LANCHBERY J.

[1] The applicant, Frontline Freight Systems (Freight), in accordance with section 239 of *The Corporations Act*, C.C.S.M. c. C225 (the *Act*), applied for judicial review of a decision of the Director of the Companies Office of Manitoba (the Director) that authorized Frontline Logistics Limited (Logistics) continue its corporate registration notwithstanding names such as Freight, Trucking, Transport, Logistics and Intermodal are often used synonymously in the trucking

industry. In addition, it is agreed there was confusion between consumers of Freight and Logistics when Logistics was registered.

[2] Section 239 of the **Act** states:

A person who feels aggrieved by a decision of the Director

- (a) to refuse to file in the form submitted to him any articles or other document required by this Act to be filed by him; or
- (b) to give a name, to change or revoke a name, or to refuse to reserve, accept, change or revoke a name under section 12; or
- (c) to refuse to grant an exemption under subsection 154(3) and any regulations thereunder; or
- (d) to refuse to issue a certificate of discontinuance under section 182; or
- (e) to refuse to revive a corporation under section 202; or
- (f) to dissolve a corporation under section 205;

may apply to a court for an order requiring the Director to change his decision, and upon the application the court may so order and make any further order it thinks fit.

[3] Counsel did not address the question of whether the application under section 239 of the **Act** is a hearing *de novo* or a judicial review. By applying the reasonableness standard, the test is superior to a *de novo* hearing. Based on the evidence before me, the result would be the same in either event. (**Canada (Minister of Citizenship and Immigration) v. Vavilov**, 2019 SCC 65)

[4] Logistics, although served, did not participate in Freight's appeal to the Director or this judicial review.

[5] Freight raised several issues in its application. The key issues are whether the process, which the Director employed, violates the principle of procedural fairness and if the decision is patently unreasonable.

[6] The Director requested and was given the opportunity to make submissions, even though not automatically entitled to do so. As Logistics did not participate, permission was granted to provide me with the entire context of this dispute. The Director's position is that procedural fairness was provided to the applicant and the decision is reasonable.

[7] Freight began operation in 2004 as Frontline Freight, which was its name registered under *The Business Names Registration Act*, C.C.S.M. c. B110. In July 2020, Freight incorporated as Frontline Freight, Ltd. One month prior, the Director permitted the registration of Frontline Logistics Inc. Freight and Logistics are engaged in the same business (shipping and receiving), in the same geographic locations (all of North America), and their respective head offices are located in the same geographic area of Winnipeg. The information before me is that Logistics commenced business in 2020.

[8] Turning to the substantial issues raised by Freight, *Re C C Chemicals Ltd (SECTION)*, 1967 ONCA 175, [1967] 2 O.R. 248 (*CC Chemicals*), Kelly, J.A. observed the task of the Registrar (in Manitoba referred to as the Director), and stated (at pp. 258-9):

The relevant facts which it is appropriate for the Provincial Secretary to seek and to consider when deciding whether to grant a name would be:

- (a) the name of any corporation, association, partnership, individual or business with respect to which similarity might be found;
- (b) the nature of the business with which that name was then associated;
- (c) the persons or class of person who ordinarily might be expected to deal with the above-named corporation, association, partnership, individual or business;
- (d) the name sought by the applicants for incorporation;
- (e) the objects for which incorporation is sought;
- (f) any additional business activities which the applicants may have in mind beyond the actual objects set out in the application;
- (g) the persons or class of person who might ordinarily be expected to deal with the corporation sought to be incorporated.

Approached in the light of the awareness of the foregoing information, the Provincial Secretary must then make a decision as to whether the visual and auditory qualities of the two names are so similar that the use of the proposed name by the corporation to be incorporated is likely to deceive those members of the public who are dealing or may wish to deal with the existing name holder.

[9] Kelly, J.A. went on to note that this approach was only a conditioning factor, but, at all times, the principal question must be the similarity of the names themselves.

[10] The cases provided by Freight and the Director cite *CC Chemicals* in support of their respective positions.

[11] The Manitoba legislation and regulations are stated in part:

Similar names not to be registered

12(1) Where a declaration is presented for registration, it shall not be registered if it contains a partnership name or business name that is the same as, or is liable to be confounded with, or closely resembles,

- (a) a name contained in any declaration previously registered and still in force; or

(b) the name of

- (i) any partnership or firm, or
- (ii) any body corporate, or
- (iii) any unincorporated company, association, organization or body;

whether or not it is registered under this Act or *The Corporations Act*; or

(c) a name that otherwise on public grounds is objectionable; or

(d) a name that has been reserved by another person under this Act or *The Corporations Act*.

.....

Use of name of dissolved partnership, corporation, etc.

12(4) Notwithstanding subsection (1), the Director may receive and register the declaration if he is satisfied by such evidence as he deems sufficient that the partnership or business name previously registered, or the partnership, firm, corporation, company, association, organization, or body to which reference is made in clause (1)(b) has been dissolved or is no longer carrying on business.

CASE LAW

[12] The issue of similar names has been considered in a number of cases. I will set out the business/corporate names in dispute:

- Bell Insurance Agencies Ltd v. Bell & Cross Agency – Bell versus Bell & Cross was sufficiently distinctive even though it carried on business in the same geographic area and provided the same service;
- C.A Fitzsimmons & Co. Ltd v. A.H. Fitzsimmons & Co Ltd – differing initials was sufficiently distinctive;

- Canadian Motorways v. Laidlaw Motorways, 1973 CanLII 26 (SCC), [1974] SCR 675 – Canadian Motorways or its ancillary corporation is not sufficient to prevent anyone from using “Motorways” as part of its corporate name;
- Northland Office Systems Group Inc. v. Northland Stationers (1963) Ltd. – Northland Stationers had been in existence for 25 years and the registration of Northland Office Systems was registered when the companies were associates of each other.

[13] To assess the reasonableness of the Director’s decision, I am not to determine the Director’s decision anew. I am to determine whether the Director’s decision is reasonable based upon the applicable factors the Director determined. There were three primary factors the Director relied upon in making its decision:

- There are 18 Business Names registered in Manitoba where Frontline is the first word in the other registrations;
- There may be one registration with the name Frontline Trucking, however there is no evidence that this name was registered with the consent of any former or current registration as required by the **Act**;
- The Director agreed there was confusion when Logistics was registered, but determined the parties had resolved certain accounts receivable and payable when issues arose, determining any conflict was resolved.

[14] Freight registered its name and is actively involved in the general business of shipping and receiving since 2004. The evidence is Logistics began operations in 2020. The evidence confirms that Logistics is generically a trucking company also performing shipping and receiving, with its head office in the same geographic area of the City of Winnipeg as Freight operates. The evidence also confirms that both companies compete for the same customers. Finally, the goods are transported to locations North America wide and receive freight for deliveries in Winnipeg from the same geographic locations.

[15] Looking at additional information, the Director relies on the fact third parties billed Freight for services provided to Logistics shortly after Logistics was first registered. Existing customers of Freight paid bills owed to Freight to Logistics, in error, and Freight was billed by third parties for services the third party rendered to Logistics. The Director believed as the parties resolved these issues internally, the two names no longer caused confusion.

[16] I find it to be unreasonable the Director failed to consider the fact that Freight and Logistics compete for the same customers in the same geographic area. The evidence before me, confirmed by Freight's counsel, the terms Freight and Logistics are considered synonymous in the industry.

[17] Both Freight and Logistics use Frontline as its identifier, which only adds to the confusion between the two names. I find Logistics is too similar to Freight given how the terms are used throughout the industry with the same descriptor term.

[18] The language of section 12 of the **Act** is clear. These two company names are too similar. Logistics is not a distinctive term and the type of business is identical to Freight. As noted by Kelly, J.A. in **CC Chemicals**, it is the similarity of the names which is the primary factor for my consideration and Freight has established *prima facie* the similarity of the name created confusion within the industry.

[19] Finally, the Director's position is there has been a resolution in the confusion over the names because certain accounts receivable and payable were resolved by the parties. This was not a factor the Director could consider. Such a decision required assumptions by the Director, which are not set forth in the legislation or regulations.

[20] The Director improperly assumed the resolution of some of the early disputes over accounts receivable and payable eliminated the possibility of confusion for potential new customers of both Logistics and Freight. It would be impossible to know this based on the information before the Director. There is no evidence the third parties interacting with Freight and Logistics were the only third parties who may be confused. This is the purpose of the **Act** and regulations. **CC Chemicals** instructs the Director to consider whether the names are too similar, not whether steps can be taken to mitigate the confusion.

[21] Therefore, applying the facts before the Director at the time of Freight's appeal, I find the Director's decision to be unreasonable applying the legislation, regulations and case law cited. There was demonstrated confusion between the

names at the time of the Director's decision. This confusion is *prima facie* the purpose of the legislation and regulations. The Director's presumption failed to address the potential for confusion existed beyond the accounts receivable and bills payable, and therefore is unreasonable.

[22] I find it unnecessary to consider Freight's argument that the Director failed to follow the rules of natural justice in determining Logistics' reservation of name.

[23] Therefore, the Director shall direct Logistics to cease using the name Logistics immediately.

[24] Costs are ordered in favour of Freight. If they cannot be agreed to, each party shall forward its written position to me within 30 days for decision.

_____ J.