

SUPREME COURT OF YUKON

Citation: *Freedom TV v. Holland*, 2016 YKSC 44

Date: 20160901
S.C. No. 14-A0024
Registry: Whitehorse

Between:

**DP1 INC., FREEDOM TV INC., MASTERWORKS 2011 TV INC.,
AARON GOLDMAN and SYMPHONIC VISION INC.**

Plaintiffs

And

**JIM HOLLAND, GREEN NEEDLE RECORDS, SEAWEED STUDIOS,
CHRIS RODGERS, AVCR VIDEO PRODUCTION**

Defendants

Before Mr. Justice R.S. Veale

Appearances:
Aaron Goldman
Lenore Morris

Appearing for the plaintiffs
Counsel for the defendants

REASONS FOR JUDGMENT (Adjournment Application)

INTRODUCTION

[1] The plaintiffs have applied for an adjournment of all matters in this court action, and specifically seek to adjourn an application of the plaintiffs for costs and contempt arising out of an application in October 2015, to be heard on September 1, 2016, and an application of the defendants for security for costs, to be heard on September 2, 2016.

[2] Mr. Aaron Goldman is self-represented and acts for the plaintiffs whom I will refer to collectively as Mr. Goldman.

[3] The defendant, Jim Holland, is represented by his lawyer, Ms. Morris.

[4] The defendant, Chris Rodgers, is self-represented, although he has received legal assistance from Ms. Morris.

[5] With respect to the adjournment application, Mr. Goldman seeks the following:

2. All of the matters currently scheduled in this action are adjourned until such time as the collaborative assessment and treatment plan, done by an occupational therapist and clinical neuropsychologist, as recommended in the last paragraph of Dr. Bruto's July 15, 2016 report, has been completed, and the courts that Aaron Goldman has ongoing litigation in have consulted with each other to arrive at a method of coordinating the litigation he is involved in so as to ensure that the accommodations he requires as a result of his particular disability are made as per medical recommendations for same.
3. The applications currently scheduled in this matter, should they be adjourned as Goldman is seeking to have done, are to be brought back on in the same sequence as they are currently scheduled, but not scheduled on the same day or on consecutive days, as they are currently scheduled, in order to ensure that Goldman has the opportunity to put his best foot forward in each case.

[6] These reasons are based solely upon the notice of application and the affidavit of Mr. Goldman #8 filed July 26, 2016. Mr. Holland opposes the application.

BACKGROUND

[7] This background is not intended to be a finding of fact about any issue in this matter but rather to set the context.

[8] The initial Statement of Claim filed by Mr. Goldman on May 23, 2014, states that his claim arises out of arrangements to create audio and video recordings of the 2013 Blue Feather Music Festival in Whitehorse, Yukon.

[9] Just days before the festival began, Mr. Goldman's audio engineer backed out and he hired the defendant, Jim Holland, to do the recording.

[10] On November 5, 2013, Mr. Goldman hired the defendant, Chris Rodgers, as cameraman to videotape the festival on November 8 and 9, 2013, at the Yukon Arts Centre. Mr. Rodgers claims he released the video files to Mr. Goldman on November 9, 2013 and he has never had the audio files. Mr. Rodgers claims he invoiced Mr. Goldman on November 13, 2013 and did not receive payment until May 20, 2014.

[11] The amounts to be paid for these services are not significant but the issue of what was said during these negotiations has become the focus of Mr. Goldman's claims. The upshot is that Mr. Goldman in his statement of claim filed May 23, 2014 claimed for the following:

- (a) The immediate release of all Bluefeather audio files and any backup copies of same by Holland to the Plaintiffs.
- (b) Damages to be paid jointly by the defendants to the plaintiffs for lost income and delay of financing, with the quantum of damages and appropriate distribution of liability for these damages to be determined at trial;
- (c) Damages to be paid jointly by the defendants to the plaintiffs for slander, libel and defamation, with the quantum of damages and appropriate distribution of liability for these damages to be determined at trial;
- (d) Damages to be paid jointly by the defendants for personal harm caused to Mr. Goldman, with the quantum of damages and appropriate distribution of liability for these damages to be determined at trial;
- (e) a freeze on all of the assets of Chris Rodgers, AVCR Productions, Jim Holland, Seaweed Music and Green Needle Records pending the full payment of the damages awarded to the Plaintiffs as a result of the within litigation;

- (f) a certificate of pending litigation to be registered against any property owned by Chris Rodgers, AVCR Productions, Jim Holland, Green Needle Records or Seaweed Music pending the full payment of the damages awarded to the Plaintiffs as a result of the within litigation;
- (g) an order expediting this litigation given the prima facie nature of the evidence involved, the simplistic nature of the legal issues involved and the clear document trail of evidence available to expedite the litigation process;
- (h) costs of this action on a substantial indemnity basis.
(my emphasis)

[12] Mr. Holland claims that he audio-recorded all the festival performances on November 8, 9 and 10, 2013, under Mr. Goldman's direction and that on November 15, 2013, he invoiced Mr. Goldman for \$1,800 plus \$90 GST. Mr. Holland claims that Mr. Goldman did not make any payment up to April 23, 2014, when Mr. Holland terminated the contract as he alleges Mr. Goldman did not have any financing for the Blue Feather project. At this time, Mr. Holland says that Mr. Goldman began to threaten lawsuits for "tens of thousands" and "hundreds of thousands" of dollars if he did not release the audio tapes.

[13] Mr. Goldman alleges that all Yukon crew involved in the television production of the Blue Feather Music Festival had their invoices paid in full as of May 23, 2014. However, he alleges that Freedom TV incurred several hundred thousand dollars of damages as a result of financing delays caused by Mr. Holland's advice that audio files had been erased or lost and Mr. Holland's refusal to allow the existence of the audio files to be verified by a trusted third party.

[14] The essence of the court action may come down to the terms of the agreements between Mr. Goldman and Mr. Holland or Mr. Rodgers and whether the defendants agreed to await payment on their invoices until the financing of the Blue Feather project was in place. The damages claim of Mr. Goldman includes slander, libel and interference with contractual relations all of which appears to arise from communication or negotiation between the parties which is consistent with Mr. Goldman's view of the simplistic nature of the legal issues involved.

[15] Mr. Goldman has filed an Amended Statement of Claim consisting of 141 paragraphs which include the efforts to resolve the matter in full detail.

[16] Mr. Goldman, in paras. 69 – 141 pleads the circumstances of the attempts to resolve the dispute and includes Ms. Morris, counsel for Mr. Holland, in the allegations.

The amended claim of relief of Mr. Goldman is the following:

- (a) Damages to be paid jointly by the defendants for lost income and delay of financing, with the quantum of damages and appropriate distribution of liability for these damages to be determined following a strict liability trial;
- (b) Damages to be paid jointly by the defendants to the plaintiffs for slander, libel and defamation, with the quantum of damages and appropriate distribution of liability for these damages to be determined following a strict liability trial;
- (c) Punitive damages to be paid jointly by the defendants for personal harm caused to the plaintiffs, with the quantum of damages and appropriate distribution of liability for these damages to be determined following a strict liability trial;
- (d) certificates of pending litigation to be registered against any property owned by Chris Rodgers, AVCR Productions, Jim Holland, Green Needle Records or

Seaweed Music pending the full payment of any damages awarded to the Plaintiffs;

- (e) costs of this action on a substantial indemnity basis

The Adjournment Application

[17] Mr. Goldman, who is 49 years old, states that he is a “person under disability” and claims as follows:

1. I am a person under disability involved in a number of legal cases in which I have sought accommodations from various courts in the past due to my cognitive impairments.
2. In far too many situations, despite the appropriateness of my requests for accommodations, courts have often denied my requests for accommodations, apparently viewing my genuine need for accommodations as being an effort to create inappropriate delays in proceedings that, in every case, I very much want to have moved forward as soon as it is possible, provided that the way that these matters are scheduled is handled in such a way that I am able to put my best foot forward in each case.
3. It is the firm belief of my family doctor and the expert witness clinical neurologist I have retained to assess me that my Charter rights are being repeatedly violated by the courts, and they have advised me that I should bring complaints to the various human rights commissions in each jurisdiction where appropriate to address the previous instances of this occurring, seek appropriate remedies for these previous inappropriate actions by courts, and ensure that no further such inappropriate denials of my Charter rights occur.
4. More recently, I have also been advised by a lawyer that it is advisable that I make Charter arguments where appropriate, to have certain previous decisions of the courts overturned, and previous inappropriate actions taken by certain court staff and judges dealt with as violations of my Charter rights.

5. As Canada is also signatory to the UN Convention on the Rights of Persons with Disabilities, a copy of which is attached as **Exhibit A**, I have also been advised to rely on this Convention in terms of the types of accommodations that the courts are obligated to make for me in Canada.
6. I am writing this affidavit, in part, in support of my request that all matters in this case be adjourned until the completion of the collaborative assessment and treatment plan that is recommended in the last paragraph of the July 15, 2016 report of clinical neurologist Dr. Venera Bruto, attached as **Exhibit B**.
7. In the last paragraph of her July 15, 2016 report, she indicates that the current demands on me are clearly not appropriate from the perspective of my cognitive status, and warns of the likelihood of psychological difficulties in the context of my attempts to meet the court's demands that I do what is not doable for me from a cognitive perspective.

...
14. Dr. Silver's [Mr. Goldman's family doctor] recommendations for accommodation for my disability, contained in her letters of November 21, 2015 and March 1, 2016, which I attach for reference as **Exhibit C**, include the following:
 - a) Accommodations to facilitate accuracy and thoroughness in my duties;
 - b) Accommodations limiting the amount of physical separation between myself and my mother, Janice Goldman, who has Alzheimer's, and for whom I am the daily personal caregiver for, to a minimum;
 - c) Flexibility with regard to timelines for the scheduling of matters to allow for both my cognitive challenges and the burden of care I have for my mother;
 - d) Longer timelines being allocated than would normally be scheduled for motions and other matters I am required to deal with;

- e) More time to finish assignments being provided to me than is currently the case, particularly large multi-tasking assignments;
 - f) Increased flexibility on dates and scheduling from the court;
 - g) Supports as recommended by Dr. Venera Bruto in the last two paragraphs of her February 26, 2016 letter.
15. Dr. Bruto's recommendations for accommodations I require to facilitate fair access with regard for my disability, contained in the attached letters of February 26, 2016 and her followup letter of July 15, 2016 (also in **Exhibit C**) include (as written) in the July 15 report an addendum of further, more specific recommendations, including the following:
- a) I should receive significant assistance in compensating for my neurocognitive deficits;
 - b) Time should be spent to accurately estimate the amount of time I will require for the completion of specific tasks (and these estimates should be made in the full context of other demands on me).
 - c) **Accommodations should include a coordinated approach to ensure that professional and legal demands on me do not require multi-tasking and speeded performance;**
 - d) **Distinct periods of time should be allocated for me to perform deliverables (i.e. discreet small goals) within distinct periods of time that are commensurate with my cognitive abilities and with the assistance of serial non-judgmental cuing strategies** (I would suggest that this would ideally be facilitated through brief and frequent case management meetings);
 - e) Cuing (ideally with a case coordinator or through case management) should not occur when other environmental events / stimuli could compete with the cue;

- f) Serial (repeated) cuing should be used with the aim of promoting attention/focus to the task over time, persistence and appropriate pacing;
 - g) **If possible, a case coordinator should be appointed by the Court/Courts to ensure that the spirit of these recommendations for accommodation are included in the formulation of deliverables across all cases I am involved in;**
 - h) **(Implied recommendation): The court should, forthwith, stay all matters to allow the time necessary for me to get the specific assistance I need from both Dr. Bruto and an occupational therapist (who was recently approved by my insurer to begin working with me), due to the specific parameters of the accommodations strategies I will require, which necessitate the combined collaborative clinical assessment and treatment planning of a clinical neuropsychologist and occupational therapist with experience in rehabilitation of traumatic brain injury in adults of above average intellectual functioning.**
16. I am seeking an immediate stay of all matters I am involved in within any court system until such time as Dr. Bruto and my occupational therapist, Nicole Beauschesne, have had the opportunity to fully assess me and to collaboratively develop accommodation strategies that are then implemented in cooperation with the appropriate court representatives as per the above recommendations.
17. In order to minimize the difficulty of achieving this task, and to avoid a multiplicity of potential motions that might otherwise be required to realize the objectives set out above, I am seeking the assistance of the accessibility coordinators in each of the courts I am involved in proceedings in to help facilitate the above recommendations being adhere to by all of the courts on a coordinated basis.
18. At the recommendation of the Ontario Human Rights Tribunal's legal staff, prior to initiating any formal

complaints with the Tribunal, I have already provided this medical documentation to each of the courts I have dealings in, and I have asked court staff to provide this documentation to judges currently scheduled to hear any of the matters I am involved in, including the following:

- July 25: Federal Court, CRA non-filing list
- August 3: Yukon Supreme Court (SC – 14-A0024)
- August 19: Supreme Court of Ontario, Toronto Commercial List (CV- 15-11029-00CL)
- August 30: Supreme Court of Ontario, Toronto Commercial List (CV-15-11234-00CL)
- September 1: Yukon Supreme Court (SC – 14-A0024)
- September 2: Yukon Supreme Court (2 back-to-back motions scheduled) (SC-14-A0024)
- October 4: Supreme Court of Ontario (CV-11-441961)
- October 31: Supreme Court of Ontario (CV-12-444239)

19. Please note that this list does not include several as-yet unscheduled and overdue legal matters that still need to be scheduled and heard, but which I have been unable to meet timelines for due to ongoing legal attacks that I have been forced to meet on timelines that I have advised the courts in question were untenable for me, and were preventing me from being able to put my best foot forward, as well as undermining my business.

...

[18] The medically recommended accommodations for his disability are set out in the following paragraphs from Venera C. Bruto, Ph.D. C.Psych, Clinical Neuropsychologist in an addendum dated July 15, 2016 to a report dated December 15, 2015, a

clarification dated January 10, 2016, all of which is found in Exhibit B to Mr. Goldman's affidavit:

Given Mr. Goldman's documented neurocognitive impairment he will in my opinion require accommodations to facilitate fair access to the completion of work tasks (including tasks related to his professional and legal obligations). These accommodations would also be important from the perspective of mitigating the risk for psychological deterioration in the context of attempting to meet functional demands beyond his cognitive capacity. In my opinion accommodations should include a coordinated approach to ensuring that professional and legal demands do not require multi-tasking and speeded performance. He would be expected to require time to perform deliverables [i.e. discrete small goals] within distinct periods of time that are commensurate with his cognitive abilities and with the assistance of serial external non-judgmental cuing strategies. Cuing should not occur at a time when other environmental events / stimuli could compete with the cue. Serial cuing would aim to promote attention/focus to the task over time, persistence and appropriate pacing.

[19] Dr. Bruto begins with the reasons for the consultation request of Mr. Goldman:

On November 30th, 2015 Mr. Aaron Goldman of Winnipeg, Manitoba requested an opinion regarding the probability that neurocognitive and psychological deficits related to a motor vehicle accident that took place in February 2008 may continue to impact on his current ability to fulfill and complete tasks. In addition, he requested an opinion with respect to the probability that any such neurocognitive and psychological difficulties may have compromised his ability to complete requirements of any legal claims he began following his injury.

On January 9th, 2016, Mr. Goldman inquired as to whether he would be considered to have a mental disability arising from a mental disorder following his traumatic brain injury in February 2008 or arising from a development disorder.

[20] The initial report of Dr. Bruto dated December 15, 2015, was based on the following:

- Telephone interviews; however, she indicates that on January 19, 2016, Mr. Goldman attended a clinical interview in person which confirmed her preliminary observations in the telephone interviews.
- Review of interdisciplinary reports of assessments to determine if Mr. Goldman's injuries in a motor vehicle accident dated February 15, 2008, met insurance entitlement criteria for catastrophic injuries. The assessments were completed in 2010. Dr. Bruto later reported that the catastrophic assessment team did not find Mr. Goldman's brain injury to have resulted in a catastrophic injury.

[21] Dr. Bruto reviewed the reports, but did not have access to the raw data from any of the neuropsychology/psychology assessments. It appears that Mr. Goldman suffered a mild traumatic brain injury in the accident of February 15, 2008. None of the assessment team reports have been provided to the Court.

[22] Dr. Bruto reported on December 15, 2015, that she did not complete a clinical interview or assessment but reported her observations during her telephone interview with him.

[23] Dr. Bruto, under the heading Observations on Telephone Interviews stated that:

Although the nature of the information I have available is not sufficient to formulate a diagnosis and I do not offer a diagnosis here, the cognitive difficulties observed on interview are consistent with the type of deficits typical of mild traumatic brain injury. A contributory role for anxiety and distress, as well as other factors, cannot be ruled out on the basis of the available information.

[24] Dr. Bruto then offers the following opinion under the heading Impressions:

As such, it would in my clinical opinion be reasonable to assume that the presentation apparent at approximately 2

years post injury would continue forward without improvement. Indeed, in Mr. Goldman's case, his pre-accident history might complicate his recovery from the 2008 accident to the point that we would expect deficits to persist to a greater degree than might otherwise be the case. He has a history of pre-accident minor head injuries with loss of consciousness. We know that in someone with this type of history, what might otherwise be a relatively mild traumatic brain injury may result in more severe impairment on the basis of multiple injuries. He has a history of possible depression in 1999 superimposed on a history of chronic stress since childhood. This history can also complicate recovery. Lastly, he had a history of possible Attention Deficit Disorder prior to the accident which also, if present, would be expected to complicate/exacerbate difficulties.

[25] Dr. Bruto also opines on July 15, 2016, that

On the basis of the clinical evidence reported in multiple reports reviewed, on the balance of probabilities Mr. Goldman has been dealing with cognitive deficits since his brain injury in 2008. These deficits were last documented in 2010. On the basis of what we know about the trajectory of recovery following brain injury these deficits [in the ability to attend, retrieve information, remember to remember and complete tasks] would be expected to continue and would not be expected to improve. Exacerbations in stress would be expected to exacerbate difficulties functionally.

[26] On July 15, 2016, in an addendum, Dr. Bruto states:

My comments and impressions are based on review of file information and telephone and in-person interviews to review his circumstances. Although these interviews provided me with the opportunity to observe his mental status these were not clinical assessments. Mr. Goldman understands that the opinion that he is request does not comprise a clinical opinion and that clinical opinions would require clinical assessments to be completed.

...

[27] Dr. Bruto concludes:

In my view, while the current demands are clearly not appropriate from the perspective of Mr. Goldman's cognitive

status and the likelihood of psychological difficulties in the context of his attempts to meet what is not doable for him from a cognitive perspective, the specific parameters of the accommodation strategies he will require will necessitate the combined collaborative clinical assessment and treatment planning of a clinical neuropsychologist and occupational therapist with experience in rehabilitation of traumatic brain injury in adults of above average intellectual functioning.

[28] I note that Dr. Bruto, in Exhibit C to Mr. Goldman's affidavit prepared a report dated February 26, 2016, which contained more detail on each of the assessment reports in 2010 and a review of affidavits from 2008 providing collateral observations.

Dr. Bruto concluded in February 2016, that:

Although I did not conduct a clinical examination, my own observations during telephone and in-person interviews in late 2015 and in January of 2016, suggest the presence of deficits in sustaining attention, cognitive organization, maintaining a train of thought, and working memory. During our in-person interview, these difficulties became more prominent as the length of our interview progressed. There was no evidence on interview of clinically significant depression or anxiety. My observations in January of 2016 were consistent with those of the neurologists and neuropsychologists who examined Mr. Goldman clinically.

On the basis of the clinical evidence reported in multiple reports reviewed, on the balance of probabilities Mr. Goldman has been dealing with neurocognitive deficits since his brain injury in 2008. These deficits were last documented in 2010. Multiple collateral observers have noted the continuing presence of these cognitive difficulties. I noted the presence of cognitive difficulties in line with those observed by his clinical team during telephone and in person interviews in the fall of 2015 and in January of 2016. During my in person interview with Mr. Goldman I observed no evidence of depression or anxiety.

Case Management

[29] There are two self-represented litigants in this action: Mr. Goldman and Mr. Rodgers. As a result, there have been extensive case management conferences

attended by Mr. Goldman and Ms. Morris on behalf of Mr. Holland. Mr. Rodgers rarely participates, reflecting a strong desire not to be involved, but I am advised that he produces documents and will participate in discoveries. He has filed an affidavit in the security for costs application.

[30] In order to bring this matter to trial expeditiously as requested by all parties, the original trial date was set for July 4 – 8, 2016. Production of documents and discovery dates have been meticulously organized and set out in Case Management Conference Orders on virtually a monthly basis in 2016. The trial date was adjourned to September 26 – 30, 2016, but has now been adjourned generally.

[31] As set out in my Reasons for Judgment, 2016 YKSC 29, dated June 24, 2016 and filed July 21, 2016, Mr. Goldman applied to adjourn discoveries and the July trial date. In his adjournment application, he indicated that his cognitive difficulties arising out of a motor vehicle accident in February 2008, as well as his litigation in other jurisdictions were making it difficult to put his best foot forward in this matter.

[32] I made the following comment on the issue of accommodation for Mr. Goldman:

[7] The result is at the last case management meeting on June 3rd, a number of changes were made to accommodate Mr. Goldman. Specifically, the examinations for discovery, which had been originally set for June 3 and June 27 for a half day for Mr. Rodgers and one day for Mr. Holland, were extended to one day for the examination of Chris Rodgers and to two days for the examination of Jim Holland.

[8] Mr. Goldman indicates that matters in other jurisdictions have caused him a lot of stress and time, and the fact that he had to do the amended statement of claim for this jurisdiction meant that he had to delay matters in other jurisdictions. The result is that he is now appearing before me asking for an adjournment of the examinations for discovery, all of which are set for June 27, 28, and 29 — next week.

[33] Ultimately, over the objections of Ms. Morris who was prepared to proceed, I acceded to his request that all examinations for discovery and the September trial be adjourned on the understanding that the two outstanding applications for costs and contempt by Mr. Goldman on September 1, 2016 and security for costs by Ms. Morris on September 2, 2016, would proceed.

[34] I add that those two applications have been discussed since early in the year and it has always been Mr. Goldman's position that he wanted his application to proceed first. As a matter of judicial economy and the costs to the parties, under an Appearance Day Order dated Friday, June 3, 2016, I ordered the two matters be heard on September 1 and 2, 2016.

[35] I also add at this point that in the proposed examinations for discovery, I agreed with Mr. Goldman's request that he be permitted to examine Mr. Holland and Mr. Rodgers on issues that may pertain to these two applications. As a result, having granted Mr. Goldman's request to adjourn the discoveries and trial date, Mr. Goldman wishes to have cross-examination on the affidavits of Mr. Holland and Mr. Rodgers in the security for costs application.

ANALYSIS

Accommodation for Neurocognitive Impairment

[36] It can be fairly stated that litigation is one of the most stressful experiences in life for many citizens, whether it arises out of criminal allegations, or in the context of family law or civil suits such as this. This court action is no different and is no doubt very stressful for all involved.

[37] However, there is a distinction between litigation that a person voluntarily commences to address a perceived injustice and litigation brought against that person. In the former, barring counterclaims, the plaintiff is in control and can end the litigation by simply not pursuing it. In the latter, the defendant cannot extricate him or herself if the other party pursues the court action. Mr. Rodgers is in this latter category as he cannot extricate himself.

[38] The application of Mr. Goldman is of a very different order because he is, on the one hand, pursuing the litigation, but, at the same time applying to adjourn it generally until his cognitive impairment can be assessed and appropriate accommodations put in place. I have no doubt that the accommodations he is proposing would result in considerable delay and, if implemented, a considerable increase in legal fees for the two defendants. Ms. Morris indicated Mr. Holland has incurred fees in excess of \$10,000 to date. Mr. Goldman may also have incurred legal fees but I am not aware of that cost. What I do know is that Mr. Goldman does not wish to retain a lawyer to assist him because of the cost. I note that Mr. Goldman has consulted a lawyer on occasion and retaining a lawyer could assist Mr. Goldman in managing all his civil actions despite his possible mild cognitive impairment. I note that in spite of his possible mild cognitive impairment, based on my experience in this court action and over numerous case management meetings, Mr. Goldman presents, both orally and in writing, as a highly intelligent and very organized individual who has no difficulty expressing himself.

[39] I also raise a further consideration that bears upon Mr. Goldman's application. It is challenging enough to deal with the allegations and issues Mr. Goldman puts forward in his case. But this application for accommodation for cognitive impairment adds

another dimension in that the focus is now directed to a motor vehicle accident in February 2008, and the extensive medical reports and assessments prepared in 2010, none of which are before this Court. It is, in effect, a trial within a trial. If Mr. Holland wishes to challenge the cognitive impairment issue, his legal costs skyrocket and this litigation continues for years at great expense to all. It has already been before the Court for two years without any resolution.

[40] This brings me to the reports of Dr. Bruto. I have several concerns with them.

[41] Firstly, there is no explicit diagnosis. In other words Dr. Bruto, arising out of a request from Mr. Goldman on November 30, 2015, is expressing an opinion on the balance of probability that neurocognitive and psychological deficits relating to a motor vehicle accident in February 2008 “may continue to impact on his current ability to fulfill and complete tasks” and specifically opining on the probability that any such neurocognitive and psychological difficulties may compromise his ability to complete requirements of any legal claims.

[42] So the first concern I have is that we are proceeding to evaluate a cognitive impairment without a diagnosis that there is a cognitive impairment.

[43] Secondly, Dr. Bruto is very explicit that her opinion is based on telephone and in-person interviews of Mr. Goldman and her review of medical reports and assessments from 2010. She states that her opinion is not a clinical opinion as that would require a clinical assessment. It is my understanding that a clinical assessment may involve extensive neurological testing of a broad range of cognitive abilities which are then compared to the performance of Mr. Goldman’s peers in age, education and experience. It is my impression that this would involve “adults of above average

intellectual functioning.” It has certainly been my impression that Mr. Goldman is a very capable self-represented litigant and decidedly “of above average intellectual functioning”.

[44] I conclude that while Dr. Bruto has expressed an opinion on a balance of probabilities, I cannot rely upon her opinion to adjourn this case and begin the clinical assessments and testing required.

[45] I do not say that this limits the Court in any way from accommodating Mr. Goldman to a reasonable degree consistent with proportionality and judicial economy.

[46] The *Rules of Court* state the following:

Object of rules

(6) The object of these rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits and to ensure that the amount of time and process involved in resolving the proceeding, and the expenses incurred by the parties in resolving the proceeding, are proportionate to the court’s assessment of

- (a) the dollar amount involved in the proceeding,
- (b) the importance of the issues in dispute to the jurisprudence of Yukon and to the public interest, and
- (c) the complexity of the proceeding.

[47] The issue of accommodating self-represented litigants has been addressed by the British Columbia Court of Appeal in *Cole v. Workers’ Compensation Appeal Tribunal*, 2014 BCCA 2. In that case, Mr. Cole’s status as a self-represented litigant was not the cause of the delay that resulted in the dismissal of Mr. Cole’s petition for want of prosecution. Donald J. stated the following:

36 It is right and just to accommodate self-represented litigants on procedural matters, recognizing their relative disadvantage in an unfamiliar setting. In 2006, the Canadian Judicial Council adopted a "Statement of Principles on Self-represented Litigants and Accused Persons". It contains advice to participants in the justice system, including this admonition to the judiciary: "Judges should ensure that procedural and evidentiary rules are not used to unjustly hinder the legal interests of self-represented persons" (at 7).

...

38 The delay in the present case is not a mere slip or misunderstanding of time requirements brought about by Mr. Cole's unfamiliarity with court practice. Courts routinely extend some latitude to self-represented litigants on time limits, as they should, while trying to maintain a balance of interests and an orderly process. The test for dismissal for want of prosecution requires inordinate delay. Even making a generous allowance for Mr. Cole as a layperson, the Court must take into account the delay he created by his stubborn preoccupation with document discovery, which was inordinate, as the judge found. The Union gave Mr. Cole full notice of its intention to move to strike out his petition if he did nothing. His decision to do nothing is not related to being self-represented. It was, in my respectful opinion, wrong for the judge to use his bare status as a basis for dismissing the Union's motion.

[48] I have already extended a great deal of latitude to Mr. Goldman to present his case. The applications to be heard on September 1 and 2, 2016, have been known to the parties since January or February of this year. The Court has accommodated Mr. Goldman in adjourning discovery dates and trial dates. Mr. Goldman is not the only self-represented litigant in this proceeding.

[49] Considering the dollar amount in this proceeding and the fact that the issues are neither complex nor unique, Mr. Goldman can be reasonably accommodated by adjourning his application but proceeding on the security for cost application on Friday, September 2, 2016 at 10 a.m. This gives some latitude to Mr. Goldman in simplifying

the issue he has to meet and at the same time allowing the defendants to pursue their application.

[50] In my view, it is appropriate, considering the situations of Mr. Goldman, Mr. Holland and Mr. Rodgers, in the context of proportionality and judicial economy that the security for costs application proceed.

CONCLUSION

[51] I conclude that Mr. Goldman's application for costs and contempt should be adjourned as he requests but that the defendants' application for security for costs shall proceed on September 2, 2016, at 10 a.m. Mr. Goldman can appear in person, by telephone or video conference link, if he prefers.

[52] Cost of this application may be spoken to after the hearing of the application for security for costs on Friday, September 2, 2016.

VEALE J.