

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** *Paine v. Air Canada*, 2017 NSSC 320

**Date:** 20171213  
**Docket:** Hfx, No. 463678A  
**Registry:** Halifax

**Between:**

Nicole Paine, Mackaela Paine, Lana MacAdam

Applicant

v.

Air Canada

Respondent

**Decision: Motion to permit assistant for the appellants**

**Judge:** The Honourable Justice Patrick J. Duncan

**Heard:** By Correspondence

**Final Written  
Submissions:** November 6, 2017

**Counsel:** Nicole Paine, Self-represented Applicant  
Michael Blades, for the Respondent

**By the Court:**

[1] The appellants have initiated an appeal from a decision of the Small Claims Court. They intend to have the assistance of Gabor Lukacs in making submissions on their behalf at the appeal hearing.

[2] Counsel for the respondent submits that the appellants must bring a motion pursuant to **Rule** 34.08 seeking the court's permission to have someone assist them. The respondent's counsel takes the position that, on such a motion, the respondent has the right to cross-examine any affiant whose evidence is offered in support of the motion, to call evidence on its own behalf, and to require production of documents from the appellants on their motion.

[3] The appellants resist such an interpretation of the Small Claims Court appeal procedures, arguing that the respondent's position is contrary to the legislative intent of affording parties an informal and cost effective mechanism by which to resolve small claims.

[4] They also submit that a proper interpretation of the **Small Claims Court Act** R.S. c. 430, leads to the conclusion that no such motion is necessary. Their position is that section 16 of the **Act**, which permits appearance at the "hearing" of the claim to be made by a party "in person, or by agent", is equally applicable to the appeal hearing in Supreme Court. If correct, then the effect of this argument is that the Supreme Court is obligated to permit the appellants to have the assistance of Mr. Lukacs, if the appellants desire it.

[5] The respondent's counsel responds that the language of section 16 is not imported into the appeal procedure before the Supreme Court. Its argument is that the procedure of the Supreme Court, as set out in the **Civil Procedure Rules**, governs who may appear on behalf of the parties to the appeal.

**Discussion**

[6] The Supreme Court has jurisdiction to control its own process and the codification of that process is found in the **Civil Procedure Rules**. In my view, the **Small Claims Court Act** does not oust the discretion of the court to determine who is permitted to appear before it on the hearing of a Small Claims Court appeal.

Therefore, the appellants are required to make a motion to permit someone to assist them.

[7] The **Civil Procedure Rule** in question states:

**Assistant**

34.08 (1) A judge may permit a person to assist, and if necessary speak on behalf of, an individual party at a trial or hearing.

(2) A party on behalf of whom an assistant is permitted to speak must be present when the assistant speaks, unless a judge allows otherwise.

**Restrictions on agent or assistant**

34.09 (1) A person may not speak for a party at a trial or hearing unless the person is within subsection 16(2) of the **Legal Profession Act**, is the appointed agent of a corporate party, or has the permission of a judge to speak on behalf of a party.

(2) A judge may require a corporate party to replace its appointed agent.

(3) The presiding judge may withdraw permission for a person to assist, or speak for, an individual party.

[8] In my experience, these motions are dealt with informally, either in advance of the hearing or at the outset of the hearing. The court has a discretion to grant the motion which discretion must be exercised judicially.

[9] The key issues that the motion must address are the reasons that the assistance is necessary and the suitability of the person to provide that assistance. In this regard, the court may consider a number of factors including, but not limited to, the competency of the proposed assistant in the subject matter of the appeal, their ability to be of assistance to the litigant, their ability to be of assistance to the court, that the litigant's desire to have the person assist is based on their voluntary and informed consent, and that there is no improper purpose in seeking that the court grant permission for the assistant to participate.

[10] Access to justice is an important principle. The Rule gives the court a discretionary authority to authorize the assistant's participation. In considering how best to exercise that discretion the court must be mindful of the provision of **Rule 1.01** which dictates that the purpose of the Rules is for the "just, speedy, and inexpensive determination of every proceeding".

[11] In small claims appeals, the Supreme Court has no transcript of the evidence adduced before the hearing adjudicator. Section 32 of the **Act** provides limited grounds of appeal, being:

- (a) jurisdictional error;
- (b) error of law; or
- (c) failure to follow the requirements of natural justice,

[12] There is no further right of appeal.

[13] It is clear then that the objective of a cost effective and expeditious process also applies to the disposition of such claims on appeal. If assistance is shown to be needed, and the proposed assistant is a reasonable choice to fulfill that function, then it is difficult to see why such a complex procedure as proposed by the respondent is necessary for the respondent to outline its objections to the motion.

[14] I agree with the appellant that the respondent's proposed course of action is inconsistent both with the intent of the Legislature as expressed in the **Act**, and also with **Rule 1.01**. To employ the formalities proposed by the respondent would result in a hearing under **Rule 34.08** that would likely be longer and more involved than the appeal hearing. The respondent will have to make a compelling argument to demonstrate why such a process would be necessary.

## **Conclusion**

[15] I am prepared to receive the appellant's motion by correspondence, pursuant to **Rule 27.01(g)**, seeking permission under **Rule 34.08** to have a person (understood to be Gabor Lukacs) appointed with a right to speak on behalf of the appellants.

[16] The motion must be accompanied by an affidavit on behalf of the appellants stating the reasons for seeking permission to use an assistant, and including the reasons that the appellants believe that the proposed assistant is an appropriate person to fulfill this function on their behalf. They must also file a brief in letter form in support of their motion. If they deem it necessary they may choose to file other affidavit evidence.

[17] The appellant's motion and supporting documentation must be filed on or before December 20.

[18] The respondent is to file reply materials by December 29. If the respondent maintains the position that it seeks to cross-examine the appellant's affiant(s) on the reasons for the need to have an assistant, or seeks production of documents, then that case will have to be made out as part of the respondent's reply.

[19] The appellant will have the right to make a written response to the respondent's arguments, to be filed by January 8, 2018.

[20] I reserve the right to require the parties to present further information in writing or in court should I deem it necessary to a final resolution of the appellant's motion.

Duncan, J.