

**SCCH 336948**

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

*Cite as: Frenette v. Frenette, 2012 NSSM 38*

Between:

**Patricia Frenette and David Biron**

**CLAIMANT**

-and –

**Peter Frenette**

**FIRST DEFENDANT**

- and –

**Faith Doe**

**SECOND DEFENDANT**

**Adjudicator: David T.R. Parker**

**Heard: June 21, 2012**

**Decision: July 5, 2012**

**Counsel: Shannon McEvenue represented the Claimants**

**Andrew Gough represented the Defendant Peter Frenette**

This was a motion brought forward by the claimants for an Order for Production requiring Counsel for the defendant, Andrew Gough to disclose contact information for the defendant, Faith Doe and an Order for Substituted Service by way of ordinary mail, international courier, e-mail and Facebook.

The Defendant Faith Doe is apparently the daughter of Peter Frenette and Patricia Frenette's niece. The claimants apparently have no means of locating Faith Doe who according to the affidavit of Patricia Frenette, was last known to reside in London England. The claimants are also unsure of Faith's last name ergo the name Doe. To date the claimants have been unable to obtain the contact information or the proper name of the defendant Faith Doe or her contact information through the defendant Peter Frenette's counsel.

The claimants suggest that an Order for Substituted Service is guided by Civil Procedure Rule 31.10. The claimant suggests that as Peter Frenette is Faith's father that he should be able to contact or have contact information on his daughter. There is no affidavit of Peter Frenette to say he cannot contact his daughter or that he has no knowledge of where his daughter may be residing. However counsel has convinced me that the daughter is residing outside of the country in this case London, England.

While the Small Claims Court can use the Civil Procedural Rules as a guide, the court is reluctant to rigorously impose the Civil Procedural Rules for the very reason articulated in the claimants' brief; "the overarching purpose of this court to provide a simple, efficient forum for the adjudication of smaller claims;"

Ordering substituted service outside this jurisdiction to a foreign national would take it outside the scope of Section 2 of the Small Claims Court Act's defined purpose of the Small Claims Court. In addition to that, not knowing the defendant's name and serving it by means of substituted service causes concern. With respect to the Order for Production I would hope that a reasonable request by counsel for contact information from other counsel would be obtainable if counsel was aware of same. In this case counsel indicated that he was not in possession of such information.

In the event the information the claimants are seeking from the second defendant named, as it were, is absolutely vital to their case they do have the option of having the matter heard in the Supreme Court of Nova Scotia and therefore having access to the myriad of rules available.

For all these reasons the motion is denied and the trial will continue to be scheduled for July 19, 2012 at Small Claims Court at 5250 Spring Garden Road at 6 PM