

Date: 19971007

Docket: C.A. 137343

NOVA SCOTIA COURT OF APPEAL  
Cite as: Arb Recycling v. Halifax (County), 1997 NSCA 154

**Flinn, Jones and Hallett, JJ.A.**

**BETWEEN:**

A.R. BEGG, a businessman carrying on  
business under the name and style of  
ARB RECYCLING ) Appellant not appearing

Appellant )

- and - )

THE MUNICIPALITY OF HALIFAX COUNTY )

Respondent )

Roderick H. Rogers  
for the Respondent

Appeal Heard:  
September 23, 1997

Judgment Delivered:  
October 7, 1997

**THE COURT:** Appeal dismissed per reasons for judgment of Hallett, J.A.;  
Jones and Flinn, JJ.A. concurring.

HALLETT, J.A.:

This is an appeal from an order dismissing the appellant's action S.H. No. 117729. The appellant has filed an Appeal Book and a Factum. On September 22, 1997, the day before the hearing of this appeal, he filed an affidavit stating that he would not appear at the hearing. He did not appear.

We have reviewed the Appeal Book and the Supplemental Appeal Book filed by the respondent. We have reviewed the factums filed by the parties.

The facts disclose that the appellant failed to attend at trial. This was a conscious decision by the appellant who was and is of the opinion that the justice system in Nova Scotia is corrupt and, therefore, he would not appear. His failure to attend was not through inadvertence.

The order under appeal was made pursuant to **Civil Procedure Rule 30.01(2)(c)** which states:

30.01(2) When a proceeding is called for trial and any party failed to appear, the court may,

.....

(c) if the plaintiff fails to appear and the defendant appears, dismiss the plaintiff's claim and allow the defendant to prove his counterclaim, if any;

Sub-rule (3) provides that any such order may be set aside by the Supreme Court on such terms as it thinks just, upon an application made to the Supreme Court within ten (10) days after the order has been given. No such application was made by the appellant.

The grounds of appeal as set forth in the notice of appeal from the order are as follows:

THAT the law firm Stewart McKelvey Stirling Scales, having failed to file a change of Solicitor Notice in accordance with Civil Procedure Rule 44.01.(1) and Rule 44.06(1), was not the legally entitled to represent the Respondent, Halifax County, in this proceeding.

AND THAT according to the Civil Procedure Rules, Cox Downie was the officially recognized solicitor for the respondent, Halifax County, throughout the duration of this case.

The relief sought by the appellant is described in the notice

of appeal as follows:

THAT the Appellant will request that the judgement appealed from be reversed as follows:

THAT the alleged solicitor for the Respondent, Stewart McKelvey Stirling Scales, be removed from this case, S.H. No. 117729;

AND THAT the law firm Cox Downie be restored to its rightful standing as solicitor for Halifax County;

AND THAT all court room and legal actions taken by Stewart McKelvey Stirling Scales in the capacity as Solicitor for the respondent be declared null and void;

AND THAT this case, S.H. 117729 be reinstated;

The facts disclose that Cox Downie represented the respondent on an application to set aside a default judgment that had been obtained by the appellant in action S.H. No. 117729. That application was successful. Subsequently, Stewart McKelvey filed a defence on behalf of the respondent.

**Rule 44.01(1)** states:

44,01(1) A party who sues or defends by a solicitor may change his solicitor without an order, but until notice of the change is filed with the prothonotary and served on every other party, the former solicitor shall, subject to rules 44.05 and 44.06, be considered the solicitor of

the party until the conclusion of the proceeding.

Therefore, the respondent was defended by Stewart McKelvey as that firm filed the defence. There was no need to file a notice of change of solicitor (**Johnson v. Johnson** (1976), R.F.L. 171 (Ont. C.A.) at p. 176 applied).

The appeal is dismissed with costs to the respondent of \$500.00 plus disbursements which disbursements shall include the preparation of a supplemental appeal book.

Hallett, J.A.

Concurred in:

Jones, J.A.

Flinn, J.A.

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REASONS FOR  
JUDGMENT BY:

HALLETT, J.A.  
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