

IN THE SUPREME COURT OF NOVA SCOTIA

**Citation:** Atlantic Chemex Ltd. v. B. & D. Welders & Auto Repairs Ltd. , 2006  
NSSC 198

**Date:** 20060410

**Docket:** SH 247719

**Registry:** Halifax

**Between:**

Atlantic Chemex Ltd.

Appellant

v.

B. & D. Welders & Auto Repairs Ltd.

Respondent

**Judge:** The Honourable Justice Arthur J. LeBlanc

**Heard:** April 10, 2006, in Halifax, Nova Scotia

**Written Decision:** June 21<sup>st</sup>, 2006

**Counsel:** Peter C. Rumscheidt, for the appellant  
Chris Casey, self, for the respondent

**By the Court:**

[1] I have decided to order a new hearing, because there is not adequate information before the Court for me to appraise the merits of the appeal. There must be a new hearing on the matter before a different Adjudicator:

- a. It is an error of law; or
- b. To a natural justice; or
- c. In excess of jurisdiction.

[2] This Court's powers on appeal of a Small Claims Court decision are limited to review for error of law, error of jurisdiction, or failure to follow the requirements of natural justice: *Small Claims Court Act*, s.32(1). In this instance, it is impossible to determine whether there was an error of law because the record before the Court is insufficient. The adjudicator's reasons are brief, stating essentially that he accepted the evidence of one party. There is, of course, no verbatim record or transcript of a Small Claims Court hearing.

[3] In the circumstance, there is no basis upon which I can determine whether the evidence supports the adjudicator's order. In *Brett Motors Leasing Ltd. v. Welsford* (1999), 181 N.S.R. (2d) 76 (S.C.) Saunders, J. (as he then was) outlined the basis upon which a Small Claims Court Appeal can be reviewed to determine whether there has been an error of law. On the record before me, I am unable to apply this reasoning to determine if there has been an error.

[4] In the final analysis, justice must be done and must appear to be done.

Without adequate reasons or findings by the Adjudicator, there is a risk of injustice should I decide the appeal. The letter that I received from the adjudicator in response to my request for a further summary of evidence, law and findings of fact was essentially an affirmation of what is contained in his decision.

[5] Consequently, I have ordered a new hearing before a new adjudicator. The order of the adjudicator is accordingly set aside.

**J.**