

Small Claims Court Appeals

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Introduction

- Based on my personal experience
- Tailored to paralegals
 - To help you make better recommendations
 - Precedent appeal materials to de-mystify process
- Foundational concepts
 - Court of Law bound by precedent
 - Paralegal Rules of Conduct
- When to appeal?
- What orders can be appealed?
- Possible alternatives

Court of Law

Travel Machine Ltd. v. Madore (1983), 143 D.L.R. (3d) 94;
1983 CarswellOnt 901 (Ont S.C.)¹

8 With respect to the first point of the argument, I accept the contention of the appellant, based on the Court of Appeal decision in *Sereda v. Consolidated Fire and Casualty Insurance Co.*, [1934] O.R. 502, that the provisions of section 59 of *The Small Claims Court Act*, R.S.O. 1980, c. 476, empowering a judge to "make such order or judgment as appears to him just and agreeable to equity and good conscience" does not mean that a judge acting under that Act is not required to apply the rules of law or that he can decide an issue contrary to law. Accordingly, if on the law section 4 of *The Statute of Frauds Act* is applicable to the oral guarantee here in question, neither trial judge, nor I sitting on appeal, can properly, on the basis of "equity and good conscience" ignore the fact that section 4 of *The Statute of Frauds Act*, generally speaking, has the effect of prohibiting actions based on oral guarantees.

Court of Law

Jenica Holdings Inc. v. Larromana, 1998 CarswellOnt 1207 (Sm. Cl. Ct.)²

8 Another lesson to be taken from this series of cases touches on the jurisdiction of small claims courts. This inferior court has a unique jurisdiction. In Ontario, for example, Small Claims Courts are to "... hear and determine in a summary way all questions of law and fact and may make such order[s] as [are] considered just and agreeable to good conscience." (s. 25, *Courts of Justice Act*). To assist it to achieve such ends, this court is endowed with informal procedure and relaxed evidentiary rules. But it is still very much a court of law. As I have already noted, many of the authorities on this point involving postdated cheques are a study in how small claims courts regard their mandate by siding with writers or drawers of postdated cheques. Such cases have, however, been consistently overturned when appealed to provincial superior courts. These cases serve as a guide to small claims courts to interpret their mandate as one, above all, to work within the scope of legal precedent and principle.

Stare Decisis

***Frost Insurance Brokers Ltd. v. McMorrow*, 2005 CarswellOnt 5994 (Sm. Cl. Ct.)³**

13 Notwithstanding my observations relating to the costs issue, I am bound by the doctrine of *stare decisis* to follow the Divisional Court decisions in [*Peacock*](#) and [*Schaer*](#) . In [*Fisken v. Meehan* \(1877\), 40 U.C.Q.B. 146](#) (Ont. H.C.), at 149, Harrison C.J. stated:

It is not for a subordinate Court to disregard the decisions of a Court of Appeal; but, on the contrary, it is the duty of the subordinate Court to give full effect to such decisions, whatever its views may be as to their intrinsic wisdom.

See also Lange, D.J., *The Doctrine of Res Judicata in Canada* (LexisNexis Butterworths, 2nd ed. [2004](#)), [Ch. 8](#), Section 3: “The Doctrine of *Stare Decisis*,” at 414-423.⁴

PRC—advocate resolutely for client

Rule 4 Advocacy

4.01 THE PARALEGAL AS ADVOCATE

Duty to Clients, Tribunals and Others

4.01 (1) When acting as an advocate, the paralegal shall represent the client resolutely and honourably within the limits of the law while, at the same time, treating the tribunal and other licensees with candour, fairness, courtesy and respect.

Advocate resolutely cont'd

4.01 (4) Without restricting the generality of subrule (1), the paralegal shall,

- (a) raise fearlessly every issue, advance every argument, and ask every question, however distasteful, that the paralegal thinks will help the client's case;
- (b) endeavour, on the client's behalf, to obtain the benefit of every remedy and defence authorized by law;
- (c) never waive or abandon a client's legal rights, for example, an available defence under a statute of limitations, without the client's informed consent;

PRC—obligation re binding authority

4.01 (5) When acting as an advocate, the paralegal shall not,

...

(d) deliberately refrain from informing the tribunal of any binding authority that the paralegal considers to be directly on point and that has not been mentioned by an opponent;

PRC—encourage respect for administration of justice

Rule 6 Duty to the Administration of Justice

6.01 ENCOURAGING RESPECT FOR THE ADMINISTRATION OF JUSTICE

General Duty

6.01 (1) A paralegal shall encourage public respect for, and try to improve, the administration of justice.

(2) A paralegal shall take care not to weaken or destroy public confidence in legal institutions or authorities by making irresponsible allegations or comments particularly when commenting on judges or members of a tribunal.

When to appeal?

- High leverage/general application
 - *Matovska*⁵
 - *Toogood (Wright)*⁶
- “A paralegal shall encourage public respect for, and try to improve, the administration of justice”/long-term benefit to client
 - *Hussey*⁷
 - *Mamone*⁸

What orders can be appealed?

- *Courts of Justice Act*: Final order over \$2,500

Appeals

31. An appeal lies to the Divisional Court from a final order of the Small Claims Court in an action,
(a) for the payment of money in excess of the prescribed amount, excluding costs; or
(b) for the recovery of possession of personal property exceeding the prescribed amount in value.

<http://www.ontario.ca/laws/statute/90c43#BK50>

Appeal limit

2. (1) For the purposes of clause 31 (a) of the Act, the prescribed amount is \$2,500.

(2) For the purposes of clause 31 (b) of the Act, the prescribed amount is \$2,500.

<http://www.ontario.ca/laws/regulation/000626>

Possible Alternatives

- *Lamond v. Smith*, 2004 CarswellOnt 3176, 72 O.R. (3d) 119 (SC) letter⁹ (*Ahmad*¹⁰ and *Hussey*¹¹)
- Alternative solution for similar cases
 - Rule 12.02 when RCP 20 failed (*Van de Vrande*¹²)
 - Judicial sale to replace sheriff's auction (*Canaccede*¹³/*RBC v. Trang*¹⁴)
- Complaint under *Courts of Justice Act*

Complaint

33.1 (1) Any person may make a complaint alleging misconduct by a deputy judge, by writing to the judge of the Superior Court of Justice designated by the regional senior judge in the region where the deputy judge sits.

<http://www.ontario.ca/laws/statute/90c43#BK50>

Appendices

1. *Travel Machine Ltd. v. Madore*, 1983 CarswellOnt 901, 143 D.L.R. (3d) 94, 18 A.C.W.S. (2d) 161 (S.C.) at para. 8
2. *Jenica Holdings Inc. v. Larromana*, 1998 CarswellOnt 1207 (Sm. Cl. Ct.) at para. 8
3. *Frost Insurance Brokers Ltd. v. McMorrow*, 2005 CarswellOnt 5994 (Sm. Cl. Ct.) at para. 13
4. Lange, D.J., *The Doctrine of Res Judicata in Canada* (LexisNexis Butterworths, 2nd ed. 2004), Ch. 8, Section 3 “The Doctrine of Stare Decisis,” at 414-423
5. *Capital One Bank v. Matovska*, 2007 CarswellOnt 5605 (Div. Ct.)
6. *Capital One Bank v. Wright*, 2013 ONSC 5440, 2013 CarswellOnt 12424 (Div. Ct.)
7. *Capital One Bank v. Hussey* (26 June 2012), Lindsay 31-12 (ONSC Div. Ct.)—unreported with no reasons for decision so providing factum and order
8. Appellant's Factum in *Capital One Bank v. Mamone* (scheduled for 30 November 2015), Hamilton 15-651 (ONSC Div. Ct.)
9. *Lamond v. Smith*, 2004 CarswellOnt 3176, 72 O.R. (3d) 119 (SC)
10. “Lamond Letter” to judge and resulting amendment in *Capital One Bank (Canada Branch) v. Ahmad*, 2007 CarswellOnt 7647 (Sm. Cl. Ct.)
11. Hussey “Lamond Letter”
12. *Van de Vrande v. Butkowsky*, 2010 ONCA 230, 2010 CarswellOnt 1777
13. *Canaccede International Acquisitions Ltd. v. Abdullah*, 2015 ONSC 5553, 2015 CarswellOnt 13623
14. *Royal Bank of Canada v. Trang*, 2014 ONCA 883, 2014 CarswellOnt 17254 (leave to appeal to SCC granted 16 July 2015)
15. Materials from a successful appeal (*Capital One Bank v. Wright*, 2013 ONSC 5440, 2013 CarswellOnt 12424 (Div. Ct.))