SUPREME COURT OF NOVA SCOTIA

Citation: *Houston v. Nova Scotia (Department of Transportation and Infrastructure Renewal)*, 2019 NSSC 118

Date: 20190405
Docket: Hfx. No. 485067
Registry: Halifax

Between:

Tim Houston – Leader of the Progressive Conservative Caucus of Nova Scotia

Appellant

v.

Nova Scotia (Department of Transportation and Infrastructure Renewal) and Bay Ferries Limited

Respondents

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Judge: The Honourable Justice Peter P. Rosinski

Heard: April 1, 2019, in Halifax, Nova Scotia

Subject: Amendment of notice of appeal filed pursuant to statute (Section 41 *FOIPOP*)

Summary:

The Progressive Conservative Caucus of Nova Scotia, through an individual acting as its agent, filed a *FOIPOP* application regarding the management fee paid to Bay Ferries Ltd. The application was refused by the Respondent. The Progressive Conservative Caucus of Nova Scotia filed an appeal. Bay Ferries Ltd., a "third party" under the legislation, sought summary dismissal of the appeal; whereas the Progressive Conservative Caucus of Nova Scotia sought to amend the named appellant to "Tim Houston, as representative of the Progressive Conservative Caucus of Nova Scotia".

Issues:

(1) Is the Progressive Conservative Caucus of Nova Scotia a "person" capable of being an applicant and appellant under *FOIPOP*?

(2) Must the "person" who is the applicant, necessarily also be the named appellant?

(3) Should the amendment sought, be allowed (i.e. to identify the named appellant as "Tim Houston, as representative of the Progressive Conservative Caucus of Nova Scotia")?

(4) Should the appeal be summarily dismissed?

Result:

(1) This issue need not be decided in the circumstances of this case;

(2) Generally yes, but in the circumstances of this case and on consideration of section 43(e) *FOIPOP*, another person may become the named appellant;

(3) The amendment should be allowed as follows: "Tim Houston – Leader of the Progressive Conservative Caucus of Nova Scotia";

(4) No.

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Judge:	The Honourable Justice Peter P. Rosinski
Heard:	April 1, 2019, in Halifax, Nova Scotia
Counsel:	Nicole Lafosse Parker, for the Appellant Scott Campbell and Jennifer Taylor for the Respondents Agnes MacNeil for AGNS (attending on a watching brief)

By the Court:

Introduction

[1] The *Freedom of Information and Protection of Privacy Act*, SNS 1993, c.5 ["*FOIPOP*"] has been described by our Court of Appeal as "more generous to its citizens and is intended to give the public greater access to information than might otherwise be contemplated in the other Provinces and Territories in Canada".[1]

[2] In May 2016, the Progressive Conservative Caucus of Nova Scotia filed a *FOIPOP* request to the Department of Transportation and Infrastructure Renewal

[1] Justice Saunders speaking for the court in *O'Connor v Nova Scotia*, 2001 NSCA 132, at para. 57 (leave to appeal refused [2001] S.C.C.A. No. 51).

("TIR") in relation to the management fee paid to Bay Ferries Limited ("BFL") for their operation of ferry services between Yarmouth, Nova Scotia and Portland, Maine, USA. TIR refused to disclose the sought-after information.

[3] An informal resolution process occurred over approximately a 2 ½ year period. Catherine Tully, Information and Privacy Commissioner of Nova Scotia, conducted a review. In her December 17, 2018 decision, she recommended that TIR disclose the withheld information in full. On January 16, 2019, TIR advised it did not agree with her recommendation and "does not intend to make further disclosure on this file".

[4] On February 11, 2019, the Progressive Conservative Caucus of Nova Scotia filed a Notice of Appeal in this court, challenging the refusal by TIR.

[5] BFL argues that the Progressive Conservative Caucus of Nova Scotia is not a "person" (which "includes a corporation, and the heirs, executors, administrators or other legal representatives of a [natural] person") as contemplated in *FOIPOP* and its Regulations- therefore because the initial Application for information was signed by Ms. Lisa Manninger, as agent for the Progressive Conservative Caucus of Nova Scotia, I must consider her to be the Applicant, and because only the Applicant can appeal, she must also be the named Appellant.

[6] The Progressive Conservative Caucus of Nova Scotia asks the court to amend its Notice of Appeal, to change the named Appellant to "Tim Houston, as representative of the Progressive Conservative Caucus of Nova Scotia".

[7] While I am inclined to accept that a Nova Scotian political party caucus could be a "person" that can apply for information under *FOIPOP*, in the circumstances of this case I need not decide that legal issue.

[8] I am satisfied that the beneficial or true Applicant in this case in 2016 was the Leader of the Progressive Conservative Caucus of Nova Scotia. I am further satisfied that the present Leader of the Progressive Conservative Caucus of Nova Scotia has the capacity and standing to become the proper named Appellant.

[9] Therefore, I allow the motion to amend the Notice of Appeal, and disallow BFL's motion to summarily dismiss the appeal.

Background

[10] On May 3, 2016, Lisa Manninger, filed an application for information pursuant to *FOIPOP*.[2]

[11] She personally signed as the "Applicant" and provided the following mailing address: *PC Caucus Office*, Centennial Building, Suite 1001, 1660 Hollis Street, Halifax, Nova Scotia, B3J 1V7.

[12] In return, at *that* mailing address, she received (stamped "Received May 16, 2016 PC Caucus Office") a letter dated May 13 from Hunter Grant of the Information Access and Privacy Services – Internal Services Group ["IAP Services"]. It read in part:

> Your application for access under the *Freedom of Information and Protection of Privacy Act* (FOIPOP) was received on May 3, 2016.… In accordance with the annual, fiscal year-end billing arrangement for FOIPOP applications received from the PC Caucus Office, Transportation Infrastructure Renewal will notify Nova Scotia's Information Access and Privacy Services Division to include a $5 application fee for this application in the invoice for fiscal year 2016 – 17.

[13] By letter dated May 16, 2017, (stamped "Received May 17, 2017 PC Caucus Office"), addressed to "Ms. Margaret Brayley, Progressive Conservative Caucus Office 1000 – 1660 Hollis Street, Halifax Nova Scotia, B3J 1V7", Sandra Mitchell, Program Coordinator IAP Services, stated therein regarding "re: April 1, 2016 – March 31, 2017 FOIPOP Caucus Office Applications":

> In keeping with the fiscal year billing cycle and in advance of the bill you will receive from the Office of the Speaker, I am attaching a list of access-to-information applications received from the PC Caucus Office during the period April 1, 2016 – March 31, 2017. In total there were 164 applications at a charge of 5$ per application for a total of $820.… The amount to be billed to your office, by the Office of the Speaker, is $820."[3]

[14] The Application was formally refused by TIR by way of the Deputy Minister's response, contained in his January 16, 2019 letter addressed to Ms. Catherine Tully, Information and Privacy Commissioner for Nova Scotia.[4]

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[2] In the Application, it is described as for "all emails, memos, contracts and schedules regarding the payment of management fees to Bay Ferries, including the amount of fees to be paid and any criteria established around the payments."

[3] It appears that there is a custom in place that *FOIPOP* requests by political party caucuses are sent to the Office of the Speaker, who then bills the political party caucus in question.

[4] Which shows as copied to the three Applicants, including, I infer, to the *Progressive Conservative Caucus of Nova Scotia*.

Contrary to her recommendation, he justified the non-disclosure of the sought-after information as follows:

> The Department does not accept your finding that the application of Section 17 or 21 [of FOIPOP] was not established. The Department does not intend to make further disclosures on this file… We continue to believe that disclosure of the Management Fee set out in article 9.01 of the Agreement, when combined with the information above [ridership targets; actual final ridership; budgeted annual cost of the Yarmouth Ferry Service; actual final expenditure of the Yarmouth Ferry Service], would reveal sensitive financial details of third-party businesses and cause undue financial loss or gain to third parties.

[15] From May 2016 until that time, all the parties involved treated the Progressive Conservative Caucus of Nova Scotia as the true or beneficial Applicant. BFL only formally became involved in this proceeding when it was added as a Party by Order of Justice Wood on March 14, 2019.

[16] On February 11, 2019, a Notice of Appeal was filed pursuant to Section 41(1) of *FOIPOP* and Civil Procedure Rule ("CPR") 7. In its style of cause, it showed as the Appellant: "Progressive Conservative Caucus of Nova Scotia".

[17] That Appeal has not yet been set down for hearing. Rather, on June 17, 2019, a further motion for directions will be heard after two preliminary motions have been determined.

[18] This decision addresses those two notices of motion.

i) The Appellant seeks an order from the court to amend the Notice of Appeal filed on February 11, 2019.

[19] The formal wording of the motion is: "The appellant moves for an order to amend the Notice of Appeal filed on February 12, [*sic*] 2019."

[20] In its March 19, 2019 brief, and the attached proposed draft Order, the Progressive Conservative Caucus of Nova Scotia makes clear that it wishes to amend the named Appellant ["Progressive Conservative Caucus of Nova Scotia"] to "Tim Houston, as representative of the Progressive Conservative Caucus of Nova Scotia".

ii) On March 25, 2019, BFL filed a motion requesting "an order dismissing this appeal on a summary basis".

[21] In its brief, BFL argues that the appeal is a nullity, because:

1. Tim Houston was not the Applicant for the information requested, therefore he has *no standing* to appeal, and cannot be the Appellant;
2. The Progressive Conservative Caucus is not a legal person, and has *no capacity* to bring the appeal, whether Mr. Houston is cited as Leader of the Progressive Conservative Caucus or the purported Appellant is the Progressive Conservative Caucus; and in response to the motion to amend the description of the Appellant:
3. In any event, it is too late to substitute any person as the Appellant, because the statutory time period for appealing by a proposed "person" has expired.[5]

Why the position of Bay Ferries Limited is not persuasive

[22] I accept that this Court has inherent procedural jurisdiction to control its own process, for example by considering a motion to dismiss an appeal "to avoid unnecessary expense, delay or poor use of judicial resources."[6]

[23] I will briefly review the three arguments put forward.

1- Mr. Houston was not the "applicant", therefore he cannot be the "appellant".

[24] While BFL makes the argument that the Progressive Conservative Caucus of Nova Scotia is not a "person" as defined by s. 7 of the *Interpretation Act* ("person" *includes* a corporation and the heirs, executors, administrators or other legal representatives of a person) and therefore does not have capacity to make a *FOIPOP* application, it concedes that the *House of Assembly Management Commission Act*, c.5 of SNS 2010, clearly refers to "caucus". Ms. Parker counters that the caucus of political parties in Nova Scotia have been treated as legally recognized entities in the case of regulatory matters.[7] On the other hand, I

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[5] See Section 41(1) *FOIPOP* ("within 30 days after receiving a decision of the head of a public body pursuant to section 40, an applicant or a third party may appeal that decision…" and provided that the Minister has been given notice) and CPR 7.20 as well as Practice Memorandum 12 "Freedom of Information and Protection of Privacy Appeals"; also sections 7 and 32 of the *Interpretation Act*, RSNS 1989, c. 235; and s.2 of the *Judicature Act*, RSNS 1989, c. 240. It is not disputed that the Decision in question was received on January 17, 2019, or that the appeal was initially filed on February 11, 2019, which is within the permissible appeal time limit.

[6] Per Bryson J.A. in *Canadian Elevator Industry Education Program v. Nova Scotia (Elevators and Lifts)* 2016 NSCA 80, at paras.71-75 (commenting on the Supreme Court of Canada's decision in *Hryniak v. Maulden* 2014 SCC 7, in the context of a motion on standing prior to a hearing on the merits).

[7] E.g. at the Nova Scotia Utility and Review Board, *(re) Heritage Gas Limited*, 2010 NSUARB 229; in labour relations matters *(re) Service Employees International Union Local 2*, 2017 NSLB, in which the Nova Scotia New Democratic Party Caucus Office was the Respondent; and in previous *FOIPOP* applications regarding the

acknowledge that while there are material differences between matters involving privately constructed litigation, and an appeal under *FOIPOP*, where the parties have much more restrained roles, there is value in a specified "person" to be identified as the party to *FOIPOP* appeals to ensure a person is responsible for the management of the appeal litigation, and who can be held accountable regarding its outcome.

[25] BFL note that under Section 6 of *FOIPOP*, a "person" may request access to a record, and that such person is thereafter referred to as the "applicant", particularly in s. 41 regarding appeals to this court; further, that pursuant to section 2 of the *FOIPOP Regulations*, NS Reg 105/94, "appellant" is defined as: "means a *person* who appeals to the Supreme Court pursuant to Section 41 of the *Act*"; and "applicant" is defined as: "means a *person* who makes a request pursuant to subsection 6(1) of the *Act* for access to a record…". Who or what can constitute a "person" is not defined in *FOIPOP* or its Regulations.

[26] In any event, BFL argues that the "person" who is the named applicant, must also be the named appellant. I accept this patent logic, subject to the operation of s. 43 of *FOIPOP* and the factual matrix in this case.

[27] BFL say that a person, Lisa Manninger, commenced the Application (a copy of which is found at Exhibit "A" of Ms. Lafosse Parker's March 19, 2019 affidavit) and that she is the only proper "person" who may appeal. I disagree.

[28] In the Application, Ms. Manninger identifies the *Applicant's mailing address* as "PC Caucus Office, Centennial Building Suite 1001, 1660 Hollis Street, Halifax Nova Scotia B3J 1V7".

[29] Mr. Mark MacDonald, QC, on behalf of BFL, in his affidavit at paragraph 16 states: "As a result of this proceeding, I have learned that one of the applicants was Lisa Manninger, the Director of Research and Legislative Affairs for the Progressive Conservative Caucus."

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government's interpretation with respect to the charging of application fees to Caucus Offices, dated April 10, 2000- FI-00-11 per Darce Fardy, Review Officer; see also *O'Connor v Nova Scotia*, 2001 NSCA 132, (leave to appeal refused- [2001] S.C.C.A. No. 582) where Daniel O'Connor, Chief of Staff of the Caucus Office of the Nova Scotia New Democratic Party, the Official Opposition in 1999, submitted two *FOIPOP* applications, which became the subject of review by the Court of Appeal. Mr. O'Connor was the Respondent and Appellant by cross-appeal from a decision of this Court. The appeal there was based on section 38 of the *Judicature Act*. I could find no cases where the issue raised was whether a caucus can be the "person" required to make a *FOIPOP* application.

[30] Ms. Manninger printed her own name in the space reserved for identification of the "Applicant" – she is the nominal Applicant. However, on the evidence and matters of which I take judicial notice,[8] I am satisfied it is more likely than not, that Ms. Manninger requested the information *on behalf of* the Leader of the Progressive Conservative Caucus of Nova Scotia (the "beneficial Applicant"); and that she would have done so after being in receipt of some form of written authorization to do so.[9]

[31] I note that the IAP Services Group, which considered itself to be the appropriate administrative respondent to such applications, treated all political party caucuses as the proper entities to be billed, and appears to have treated the caucuses as the true applicants in such cases- see for example Exhibit "B" to Ms. Lafosse Parker's affidavit.

[32] Thus, in the original Application, the true "applicant" was the individual that was the Leader of the Progressive Conservative Caucus of Nova Scotia.

[33] Though Mr. Houston is presently the Leader of the Official Opposition, by virtue of being the Leader of the Progressive Conservative Caucus of Nova Scotia, he was not the Leader of the Caucus in 2016 when Ms. Manninger filed the Application on behalf of the Leader of the Progressive Conservative Caucus of Nova Scotia. However, he was the Leader at the time the appeal was filed.

[34] I need not decide whether, for purposes of commencing applications pursuant to *FOIPOP*, a caucus of a sitting political party, falls within the non-exhaustive definition of a "person" according to s. 7 of the *Interpretation Act*, though I would be inclined to find this could be the case, given its fundamentally important public interest purpose, and in furtherance thereof by taking a generous view of the wording in the legislation.

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[8] "According to the principles laid down in *Find*, judicial notice applies only where facts are either 1) so notorious or generally accepted as not to be the subject of debate among reasonable persons; or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy: *R. v. Potts* (1982), 66 C.C.C. (2d) 219 (Ont. C.A.); J. Sopinka, S. N. Lederman and A. W. Bryant, *The Law of Evidence in Canada* (2nd ed. 1999), at p. 1055. [para. 48]. (See also *R. v. Spence*, 2005 SCC 71, [2005] 3 S.C.R. 458, at para. 53.)" -at para. 238 *Quebec (Atty. Gen.) v. A.*, [2013] 1 SCR 61.

[9] I come to this conclusion based on: drawing a reasonable inference from the evidence presented and matters of which I take judicial notice; and *as well* by relying upon the operation of s. 43 (e) of *FOIPOP*. That subsection reads: "Any right or power conferred on an individual by this *Act* may be exercised… (e) by a person with written authorization from the individual to act on the individual's behalf."

[35] While in a different context, I find the words of Justice Blair in *Longley v. Canada (Attorney General)*, 2007 ONCA 852, (leave refused [2008] S.C.C.A. No. 41) nevertheless applicable to this case:

> [40] Political parties are a central feature of the political life of this country. They provide the means by which individuals may make their voices heard in a collective way. Thus, public measures that disadvantage a political party similarly disadvantage those citizens who choose to express their political and social views through the medium of that party. This is an important characteristic of the Canadian polity and is true whether parties are large or small. As Iacobucci J. observed in Figueroa, at paras. 40-41:
>
> . . . [I]t is important to note that political parties have a much greater capacity than any one citizen to participate in the open debate that the electoral process engenders. By doing so in a representative capacity, on behalf of individual citizens and supporters, political parties act as a vehicle for the participation of individual citizens in the political life of the country. Political parties ensure that the ideas and opinions of their members and supporters are effectively represented in the open debate occasioned by the electoral process and presented to the electorate as a viable option. ...
>
> Importantly, it is not only large political parties that are able to fulfil this function… Large or small, all political parties are capable of introducing unique interests and concerns into the political discourse. Consequently, all political parties, whether large or small, are capable of acting as a vehicle for the participation of individual citizens in the public discourse that animates the determination of social policy.

[36] Although the national jurisprudence suggests that political parties, which have a membership of individuals, are typically unincorporated associations and do not have a distinct legal capacity (e.g. *Longley*, at paras. 115-121), the caucus of a political party is a different creature – it is one of constitutional convention arising in the British parliamentary tradition, though presently distinguishable in some respects therefrom in Canada. It is a collection of those individuals who have been elected to office carrying the banner of that political party.

[37] Nevertheless, there is no reason why the leader of a caucus, who is unquestionably a "person", could not make an application and thereafter become an appellant, when also incidentally identified in the style of cause as Leader of the Caucus.

[38] I keep in mind the following comments of Justice Bourgeois (as she then was) in *Donham v. Nova Scotia (Minister of Community Services)*, 2012 NSSC 384, wherein she succinctly re-iterates Justice Saunders' statements regarding *FOIPOP*:

THE LAW

7 The Court was presented with no court authorities from this Province by either party. My review of the case law suggests that the remedy being sought, a more thorough search being undertaken, is not one which is typically the nature of a FOIPOP appeal in this Court. Although the Court has frequently been called upon to decide whether redactions or refusals to provide identified documents are appropriate, I was not made aware of any situation where the Court has been asked to comment upon the sufficiency of the search itself.

8 The overall purpose and intent of the FOIPOP legislation has been considered by this Province's Court of Appeal. In *O'Connor v. Nova Scotia,* 2001 NSCA 132, Saunders, J.A. comments as follows:

40 Thus, it seems clear to me that the Legislature has imposed a positive obligation upon public bodies to accommodate the public's right of access and, subject to limited exception, to disclose all government information so that public participation in the workings of government will be informed, that government decision making will be fair, and that divergent views will be heard.

41 The FOIPOP Act ought to be interpreted liberally so as to give clear expression to the Legislature's intention that such positive obligations would enure to the benefit of good government and its citizens.

...

56 Thus the FOIPOP Act in Nova Scotia is the only statute in Canada declaring as its purpose an obligation both to ensure that public bodies are fully accountable and to provide for the disclosure of all government information subject only to "necessary exemptions that are limited and specific".

57 I conclude that the legislation in Nova Scotia is deliberately more generous to its citizens and is intended to give the public greater access to information than might otherwise be contemplated in the other provinces and territories in Canada. Nova Scotia's lawmakers clearly intended to provide for the disclosure of all government information (subject to certain limited and specific exemptions) in order to facilitate informed public participation in policy formulation; ensure fairness in government decision making; and permit the airing and reconciliation of divergent views. No other province or territory has gone so far in expressing such objectives.

58 And so before turning to an analysis of s. 13, its meaning and its application to this case, I think it important to bear in mind these features that make our Act unique.

9 Several provisions contained in the legislation are also worthy of note. The right to public access is contained in section 5(1), which provides:

> 5(1) A person has a right of access to any record in the custody or under the control of a public body upon complying with Section 6.

[39] The Application was filed on behalf of the individual who was the Leader of the Progressive Conservative Caucus in 2016. Tim Houston is now the Leader. He is eligible to be the Appellant.[10]

2- The Progressive Conservative Caucus is not a legal person therefore it has *no capacity* to bring the appeal- whether Mr. Houston is cited as leader of the Progressive Conservative Caucus or the purported appellant is the Progressive Conservative Caucus

[40] To insist that Ms. Manninger or the 2016 Leader of the Progressive Conservative Caucus individually be identified as the Appellant would in my view give rise to empty formalism, and I find it difficult to believe the Legislature intended such a meaning in the circumstances.

[41] No jurisprudence has directly addressed whether a political party caucus may be included in the definition of "person" found in the *FOIPOP* and its Regulations. The approach taken by the administrative body and persons that process such applications causes me to conclude that they did not believe or suggest that the Progressive Conservative Caucus could not be the "beneficial" applicant, because it is not a "person".

[42] Presuming for a moment that BFL's arguments, that the appeal is a nullity and therefore incapable of amendment, were to be accepted, the appeal would be summarily dismissed - yet all indications are that the Progressive Conservative Caucus would file another application for access to the identical information sought-after, which would likely again be rejected by TIR, requiring another Notice of Appeal to be filed. To what end? All that would be accomplished is a delay of the appeal hearing. I am of the view that such a summary dismissal of an appeal, not being a decision on the merits of the matter, would not be a bar to another appeal being filed and heard by this court- see for example Justice Oland's comments regarding some of the applicable principles in the context of civil appeals: *Canada v. MacQueen*, 2014 NSCA 73, at paras. 19, 26-28 and 45.

[43] Recent jurisprudence abounds with courts' recognition of the importance of the need for them to facilitate and improve "access to justice", and reinforce

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[10] The distinction between a political party and an individual, such as its leader, was noted by the court in *Manitoba Progressive Conservative Party v Manitoba*, 2014 MBQB 155 per Hanssen J.; other useful authorities may be found in *Trapp v. British Columbia*, 2018 BCSC 580 per Branch J.

respect for the "rule of law". This appeal is governed in part by CPR 7. CPR 1.01 [Object of these Rules] states: These Rules are for the just, speedy, and inexpensive determination of every proceeding". "An appeal to the court under legislation" is a kind of "proceeding" according to CPR 3.

[44] I have determined that Mr. Houston is the proper Appellant, and that simultaneous reference to him in the Notice of Appeal as the "Leader of the Progressive Conservative Caucus" does not detract from his eligibility to be the Appellant.

3 - It is too late to substitute any person as the Appellant because the statutory time period for appealing by a proposed "person" has expired.

[45] I have concluded that Ms. Manninger acted on behalf of an individual (a "person") who was, if you will, the "beneficial Applicant". That person was The Leader of the Progressive Conservative Caucus at the time the Application was filed. Therefore, the original Applicant was that person, in their capacity as Leader of the Progressive Conservative Caucus.

[46] To conclude as argued by BFL, that no person other than the original individual applicant should be recognized by this Court as a proper "appellant", particularly in these circumstances where the status of individuals who might bring such applications is not static (e.g. Ms. Manninger, who was an employee, or the individual that was the Leader in 2016), would be to artificially subvert legitimate ongoing attempts to rely on this legislation to fulfil its intended broad purpose.

[47] The legislation is drafted such that it is arguable that only a "person" as defined in s. 7 of the *Interpretation Act* (a [natural] person, a corporation, and the heirs, executors, administrators or other legal representatives of a [natural] person) has the capacity to be an Applicant.

[48] In the case at Bar however, the reality is that it is the political party caucus that had the initial interest to file the application, and which consequently would then dedicate the money and effort to investigate the matter further. The Leader of the Caucus is the individual ultimately responsible for caucus matters.

[49] BFL's argument suggests that if the true Applicant was the Leader of the Progressive Conservative Caucus in 2016, only that individual can be the Appellant. I infer that the persons in the position of Leader of the Progressive Conservative Caucus since this Application was filed, have maintained the position that the Application should continue to be supported.

[50] The named Appellant presently is the "Progressive Conservative Caucus of Nova Scotia".

[51] The motion to amend the Notice of Appeal is claimed to be based on an application of CPR 83.11 and CPR 35. Rule 83.11 reads:

> (1) A judge may give permission to amend a court document at any time.
>
> (2) An amendment cannot be made that has the effect of joining a person as a party who cannot be joined under Rule 35 – Parties, including Rule 35.08(5) about the expiry of the limitation period.
>
> (3) A judge who is satisfied on both of the following may permit an amendment after the expiry of the limitation period of, or extended limitation period, applicable to a cause of action:
>
> (a) the material facts supporting the cause or pleaded;
>
> (b) the amendment merely identifies, or better describes, the cause.[11]

[52] Rule 35.06 is entitled "Error in joining party". That Rule reads:

> (1) *No proceeding is defeated by reason of* a wrong person having been joined as a party or *a right person having not been joined, unless* an order removing or adding a party would cause serious prejudice that cannot be compensated in costs or an abrogation of an enforceable limitation period.
>
> (2) A judge may make an order removing or adding a party to prevent the defeat of a proceeding, unless doing so would cause serious prejudice that cannot be compensated in costs or an abrogation of an enforceable limitation period.
>
> (3) No proceeding is defeated by reason of a party having been wrongly named, unless both of the following apply:
>
> (a) because of the mis-naming, the mis-named party was unaware of the proceeding;
>
> (b) the correction will cause serious prejudice that cannot be compensated in costs and would not have been suffered if the party had been properly named originally.
>
> (4) A judge may correct the name of a party to prevent the defeat of a proceeding.
>
> (5) A corrected proceeding continues as if the correction had been made originally.

[53] A similar framework exists in Rule 35.08, entitled "Judge joining party". That Rule reads:

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[11] Without making a definitive determination about this, this Rule appears not to be concerned with statutory appeals.

(1) A judge may join a person as a party in a proceeding at any stage of the proceeding.

(2) It is presumed that the effective administration of justice requires each person who has an interest in the issues to be before the court in one proceeding.

(3) That presumption is rebutted if a judge is satisfied on each of the following:

joining a person as a party would cause serious prejudice to that person, or a party;

the prejudice cannot be compensated in costs;

the prejudice would not have been suffered had the party been joined originally or would have been suffered in any case.

…

(5) Despite Rule 35.08 (1), a judge may not join a party if the limitation period, or an extended limitation period, has expired on the claim that would be advanced by or against the party, the expiry precludes the claim, and the person protected by the limitation period is entitled to enforce it.

Conclusion

[54] With a minor modification, I grant the motion sought by the Progressive Conservative Caucus of Nova Scotia. I dismiss the motion brought by BFL.

[55] I am satisfied that it is appropriate to substitute "Tim Houston – Leader of the Progressive Conservative Caucus of Nova Scotia", for the presently named Appellant, "Progressive Conservative Caucus of Nova Scotia". I will do so by issuance of a *nunc pro tunc* order, which has the effect of retroactively making "Tim Houston – Leader of the Progressive Conservative Caucus of Nova Scotia" the named Appellant at the time the Notice of Appeal was filed on February 11, 2019.[12]

[56] These changes will not "prejudice" BFL. The very same application that was made for information, and refused, which then became the subject of the appeal, in all material respects remain the same.

[57] The Appeal was filed within the 30-day statutory limitation period. It had not expired. There is no serious prejudice to BFL, nor is there an abrogation of a limitation period. The appeal proceeding will continue as if this correction had been made immediately before the Notice of Appeal was filed.

[12] See Justice Oland's reasons in *Coates v. Capital District Health Authority*, 2011 NSCA 4.

[58] Hearing no objections about the form of the order, I will grant the order as drafted.

Costs

[59] The parties are not seeking costs, and none are awarded.

Rosinski, J.