



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Bell v. Ball*, 2026 NLSC 24

Date: March 6, 2026

Docket: 202301G0842

BETWEEN:

KIM N.I. BELL

PLAINTIFF

AND:

JOHNATHAN BALL

DEFENDANT

Before: Justice Peter N. Browne

Place of Hearing: St. John's, Newfoundland and Labrador

Dates of Hearing: January 15, 2026; February 11, 2026

Date of Oral Judgment: March 5, 2026

Summary:

The Plaintiff, Kim N.I. Bell (“Mr. Bell”), made an interlocutory application to cross-examine the Defendant, Johnathan Ball (“Mr. Ball”), on his supporting affidavit filed as part of his application opposing the Court’s jurisdiction on the basis of *forum non conveniens*.

Held: Mr. Bell’s application was denied. The nature of the intended cross-examination would only stray into the merits of his claim and amount to a fact-finding expedition. The Court felt that it could proceed with its *forum non conveniens* analysis based on the record which included an extensive affidavit filed by Mr. Bell. Costs were in the cause on a Column III basis.

Appearances:

Kim N.I. Bell	Appearing on his own behalf
John F.E. Drover	Appearing on behalf of the Defendant

Authorities Cited:

CASES CONSIDERED: *Tucker v. Unknown Person*, 2014 NLCA 36; *Metal World Inc. v. Pennecon Energy Ltd.*, 2015 NLCA 12; *Oleynik v. Memorial University of Newfoundland*, 2021 NLCA 56; *Kathirgamanathan v. Western Regional Integrated Health Authority*, 2021 NLSC 89; *Oleynik v. Memorial University of Newfoundland and Labrador*, 2021 NLSC 31; *Kielley v. General Hospital Corporation* (1997), 158 Nfld. & P.E.I.R. 352, 76 A.C.W.S. (3d) 11 (Nfld. S.C.(C.A.)); *Newfoundland (Attorney General) v. Churchill Falls (Labrador) Corp.* (1978), 15 Nfld. & P.E.I.R. 77, 38 A.P.R. 77 (Nfld. S.C.(C.A.)); *Beanland v. Beanland* (1997), 151 Nfld. & P.E.I.R. 51, 471 A.P.R. 51 (Nfld. S.C.(C.A.)); *Newfoundland (Attorney General) v. Churchill Falls (Labrador) Corp.* (1977), 16 Nfld. & P.E.I.R. 460, A.P.R. 460 (Nfld. S.C.(T.D.)), *aff’d* (1978), 15 Nfld. & P.E.I.R. 77, 38 A.P.R. 77 (Nfld. S.C.(C.A.)); *Szeto v. Dwyer*, 2010 NLCA 36; *Memorial University of Newfoundland v Oleynik*, 2023 NLSC 126

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, s. 42, Sch. D

REASONS FOR JUDGMENT

BROWNE, J.:

INTRODUCTION

[1] Jonathan Alastair Ball (“Mr. Ball”), the Defendant/Applicant, has made application to stay the proceeding under Rules 6.07(7) and Rule 10.05 of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, s. 42, Sch. D (the “Rules”). Mr. Ball argues that there is “no real and substantial connection” of the Plaintiff/Respondent Kim N.I. Bell’s (“Mr. Bell) claim against him to the jurisdiction of the courts of Newfoundland and Labrador.

[2] Mr. Ball has not filed a Defence and brings an interlocutory application to dispute the *jurisdiction simpliciter* of the Supreme Court of Newfoundland and Labrador to adjudicate Mr. Bell’s claim. As an alternative argument, Mr. Ball posits that should this Court find that it does have *jurisdiction simpliciter*, then it should exercise its discretion under the doctrine of *forum non conveniens* and decide in favour of the matter being heard in the UK courts.

[3] As part of perfecting his response to Mr. Ball’s interlocutory application on jurisdiction, Mr. Bell seeks leave to cross-examine Mr. Ball on his supporting affidavit. Oral argument on the leave application occurred over two days at the request of Mr. Bell so as to permit him to consider the legal issues that need to be addressed in his oral response. The Court granted Mr. Bell’s request.

[4] Late in the day before the continuation of oral argument, Mr. Bell filed another interlocutory application asking the Court to strike Mr. Ball’s *forum non conveniens* application, along with his supporting affidavit and his legal counsel’s Memorandum of Fact and Law, on the basis they do not disclose a reasonable cause of action (Rule 14.24(1)(a)), and they are false, scandalous, frivolous or vexatious (Rule 14.24(1)(b)).

[5] In response, I informed Mr. Bell that the Court was not prepared to hear his Rule 14.24 application because he still wished to proceed with his application for leave to cross-examine. Instead, the Court informed Mr. Bell it would decide the

leave issue first, and once decided, it would hear from the parties on the substantive issue of jurisdiction and the application to strike.

PRELIMINARY ISSUE

Should this Court allow Mr. Bell to cross-examine Mr. Ball on his affidavit of May 16, 2025?

POSITION OF THE PARTIES

Mr. Bell

[6] Mr. Bell has a PhD in Aquatic Ecology and lives in the City of St. John's, Newfoundland and Labrador. Mr. Bell seeks leave to cross-examine Mr. Ball on his supporting affidavit on the grounds that it ostensibly contains falsehoods that are built upon a foundation of fabricated evidence aimed at besmirching his character.

Mr. Ball

[7] Mr. Ball is a resident of the County of Suffolk and is a citizen of the United Kingdom ("UK"). He has no business or personal connections to the Province of Newfoundland and Labrador or the Dominion of Canada. Mr. Ball's counsel, both in his written material and his oral presentation, argued that Mr. Bell has failed to establish any legal basis to warrant this Court to exercise its discretion to permit him to cross-examine his client.

RELEVANT RULES OF COURT AND JURISPRUDENCE

Rules of Supreme Court, 1986

[8] Rule 29 of the *Rules of the Supreme Court, 1986*, establishes the procedures for hearing applications. Rule 29.09 deals with how evidence in an application is to be presented:

- 29.09.** (1) Evidence on a hearing may be given
- (a) by affidavit or statutory declaration made pursuant to Rule 48;
 - ...
 - (c) with leave of the Court, by any witness in person; or

[9] The presumption is that the evidence in support of an application will be presented by way of affidavit or statutory declaration, with leave of the Court required to present *viva voce* evidence. Further support for this proposition is in the text of Rule 48 itself:

- 48.10.** The deponent of an affidavit to be used on a trial or hearing may be cross-examined and re-examined on
- ...
 - (c) a hearing, under rule 29.09(1)(c).

[10] The onus lies on the party seeking leave to cross-examine an affiant to overcome the presumption and show that cross-examination is necessary and appropriate in the circumstances of a given matter.

JURISPRUDENCE

[11] Authorities from this jurisdiction have found cross-examination to be appropriate in a number of different circumstances. These were helpfully categorized by the Court of Appeal in *Tucker v. Unknown Person*, 2014 NLCA 36.

[12] The Court highlighted the following considerations at paragraph 27:

- a. Whether the facts in the affidavit are in issue (see *Royal Bank v. Jones*, 2000 BCSC 520 (B.C. S.C.) at para. 42; *Brown v. Garrison* (1967), 63 W.W.R. 248 (B.C. C.A.) at p. 250);
- b. Whether cross-examination is necessary to challenge the facts deposed to in the affidavit (see *Beanland v. Beanland* (1997), 151 Nfld. & P.E.I.R. 51 (Nfld.C.A.) at para. 35; *John Doe v. Roman Catholic Episcopal Corp. of St. John's*, 2004 NLCA 27, 237 Nfld. & P.E.I.R. 56 (N.L.C.A.) at para. 19; and /or
- c. Whether the affidavit is contentious or the statements deposed to are in dispute (*R. v. Dean* [1996 CarswellBC 1969 (B.C.C.A.)], 1996 CanLII 3102 at para. 9; *Cadboro Investments Ltd. v. Canada West Insurance Co.* (1987), 19 B.C.L.R. (2d) 352 (B.C. C.A.) at para. 22; *General Electric Company v. United States*, 1980 ABCA 316 (Alta. C.A.) (CanLII) at para. 6.[emphasis in original]

[13] In my view, *Tucker* is an effective consolidation of the law respecting leave for cross-examination, and its reasons have proven influential in the subsequent jurisprudence from our Court of Appeal; (see *Metal World Inc. v. Pennecon Energy Ltd.*, 2015 NLCA 12; *Oleynik v. Memorial University of Newfoundland*, 2021 NLCA 56; and *Kathirgamanathan v. Western Regional Integrated Health Authority*, 2021 NLSC 89).

[14] When deciding whether to grant leave to cross-examine, the Court must first identify the issues in dispute in the underlying application. This is an integral step in identifying the potential relevance of any evidence that the proposed cross-examination would hope to elicit. The purpose of cross-examination must be to assist the Court in deciding the merits of the underlying application; (*Tucker* at para. 32).

[15] In order for Mr. Bell's request for cross-examination to be granted, it is incumbent on him to demonstrate that his cross-examination will tend to elicit evidence that satisfies the threshold requirements of relevance and necessity regarding the issue before the Court; (see *Oleynik v. Memorial University of Newfoundland and Labrador*, 2021 NLSC 31, at para. 8).

ISSUES

[16] The substantive issues to which the Interlocutory Application gives rise are:

- (1) Do the Courts of NL have *jurisdiction simpliciter* over the proceeding initiated by Mr. Bell against Mr. Ball; and
- (2) If so, should this Court decline jurisdiction on the basis of *forum non conveniens* in favour of the UK courts?

[17] The procedural issue I must address in this application is whether granting leave to Mr. Bell to cross-examine Mr. Ball would serve the interests of justice in determining the substantive issues of this Court's exercise of jurisdiction over Mr. Bell's claim.

ANALYSIS

[18] The decision to allow or deny leave to cross-examine affiants on an application is within the discretion of the judge hearing the matter.

[19] Applications are not like trials where in-person testimony, with cross-examination, is the general rule. With applications, the general rule is that evidence is given, in the first instance, by way of affidavit, with the right to cross-examine on an affidavit subject to the discretion of the court; (see *Rules of the Supreme Court, 1986*, at rules 48.10(c) and 29.09(1)(c); *Kielley v. General Hospital Corporation* (1997), 158 Nfld. & P.E.I.R. 352, 76 A.C.W.S. (3d) 11 (Nfld. S.C.(C.A.)), at para. 18; and *Newfoundland (Attorney General) v. Churchill Falls (Labrador) Corp.* (1978), 15 Nfld. & P.E.I.R. 77, 38 A.P.R. 77 (Nfld. S.C.(C.A.)), at paras. 14-17).

[20] A party seeking leave to cross-examine in the context of an application must satisfy the court that there is a valid reason for doing so; (*Beanland v. Beanland* (1997), 151 Nfld. & P.E.I.R. 51, 471 A.P.R. 51 (Nfld. S.C.(C.A.)), at paras. 32-35).

[21] In *Newfoundland (Attorney General) v. Churchill Falls (Labrador) Corp.* (1977), 16 Nfld. & P.E.I.R. 460, A.P.R. 460 (Nfld. S.C.(T.D.)), aff'd (1978), 15 Nfld. & P.E.I.R. 77, 38 A.P.R. 77 (Nfld. S.C.(C.A.)), the judge denied the application for leave to cross-examine and found that the reasons advanced in support of the request for cross-examination trespassed too deeply into the merits of the plaintiff's case; (see para. 66).

[22] On appeal, the Court found no error in the judge's denial of leave to cross-examine because the affidavits did not concern themselves with the primary issue "of whether the order for service *ex juris* ought to have been issued in the first place or ought to be discharged".

[23] When assessing the relevance of the proposed cross-examination, my focus must remain on the issues raised in the application concerning the jurisdiction of this Court and not the merits of the case. In doing so, I must recognize and pay attention to the principle of proportionality in the application.

[24] The purpose of the *Rules of the Supreme Court, 1986*, is to ensure the expeditious and cost-effective determination of disputes and that the "*Rules* are not a menu to allow parties *carte blanche* to choose whatever procedural options they want, regardless of the impact on the proceedings as a whole"; (see *Szeto v. Dwyer*, 2010 NLCA 36, at para. 53).

[25] There is no expectation of impartiality on the part of an opposing party who files their own affidavit. Being a witness for an adverse party, on its own, does not justify granting leave to cross-examine. Cross-examination in the context of an application is not intended to serve as a fact-finding or discovery investigation; (*Memorial University of Newfoundland v Oleynik*, 2023 NLSC 126, at para. 26).

[26] I listened very carefully to Mr. Bell's argument that he should be granted leave to cross-examine Mr. Ball. He described their relationship as one where Mr. Bell would conduct the patent paperwork, including working towards a worldwide patent, and Mr. Ball would conduct the necessary engineering and refrigeration drawings.

[27] Counsel for Mr. Ball acknowledged, on behalf of his client, that Mr. Bell carried out patent work for Mr. Ball's company in the UK and was paid for his services, but at no point was there any contract that was made in the Province of Newfoundland and Labrador.

[28] Mr. Bell advanced the argument that there were omissions and deficiencies in the Ball Affidavit. However, I note that an opposing party is not expected to present exhaustive detail addressing every pleading or fact. Instead, Mr. Ball, as the Respondent, has the right to file his own affidavit with any details that he feels were relevant to the application, and he has done so.

[29] The general allegations of omissions and deficiencies within affidavits as outlined in the Reply filed by Mr. Bell failed to give any specific examples and failed to indicate how the affidavits were contentious, or how the statements deposed to were in dispute regarding the issue of whether this court should assume jurisdiction of this litigation or to defer to the courts in the UK.

[30] Mr. Ball's position was made quite clear throughout his affidavit that there was no contract that originated in NL. In fact, he goes further and states that he has no contract with Mr. Bell at all as Mr. Bell has been paid in full for the services he provided to his company.

[31] I commend Mr. Bell for the extensive preparation that led to his oral argument on this procedural issue, including his detailed affidavit and Memorandum of Fact and Law. However, after listening to the argument provided by both parties, I conclude there is no serious dispute over the facts as they pertain to the issue of this court's exercise of its discretion to accept or to decline jurisdiction to hear Mr. Bell's claim.

[32] I find Mr. Bell has addressed the necessary facts that I must consider on this point of law throughout his affidavit and argument. Permitting him to cross-examine Mr. Ball would only open the door to what would amount to a fact-finding expedition on the merits of his claim. This type of questioning would more properly be left to discovery or other forms of disclosure and production. It is on this basis that I am satisfied that it would be inappropriate to grant him leave to cross-examine Mr. Ball.

CONCLUSION

[33] I decline leave to cross-examine the deponent, Mr. Ball. Costs will be costs in the cause on a Column III basis.

PETER N. BROWNE
Justice