

CASE NO.**VOL. NO.****PAGE**

DONALD J. LOWE and
MICHAEL A. LOWE

CANADIAN PACIFIC LIMITED, a body
corporate and DOMINION ATLANTIC
RAILWAY, a body corporate

- and -

(Appellants)

(Respondents)

CA 149217

Halifax, N.S.

CROMWELL, J.A.
(Orally)

[Cite as: **Lowe v. Canadian Pacific Ltd. , 1999 NSCA 115**]

APPEAL HEARD:

October 5th, 1999

JUDGMENT DELIVERED:

October 5th, 1999

WRITTEN RELEASE OF ORAL:**SUBJECT:**

Appeals - Power of Provincial Courts of Appeal to Grant Leave to Appeal to the Supreme Court of Canada

SUMMARY:

The respondents sued the applicants for a declaration and other relief based on the contention that the applicants were not entitled to enter or use the respondents' lands as a landing strip. The principal issue at trial and on appeal was the nature of the property interest, if any, of the respondents in certain railway lands. The trial judge and this Court concluded that the respondents' interests derived from the acquisition by the Western Counties Railway Company of the fee simple of the railway lands in 1876. The applicants sought leave to appeal to the Supreme Court of Canada pursuant to s. 37 of the **Supreme Court of Canada Act** to challenge this conclusion.

ISSUE:

Should leave to appeal be granted?

RESULT:

The application was dismissed with costs. The Court held that its discretion to grant leave to appeal to the Supreme Court of Canada should be exercised in only rare and exceptional circumstances and that, generally, leave to appeal should be sought from the Supreme Court of Canada. There were no rare or exceptional circumstances in this case which would justify this Court in requiring the Supreme Court of Canada to hear it.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 4 pages.