

NOVA SCOTIA COURT OF APPEAL

Citation: *Hatch Ltd. v. Factory Mutual Insurance Company*, 2015 NSCA 60

Date: 20150624

Docket: CA 429986

Registry: Halifax

Between:

Hatch Ltd., a body corporate, formerly known as
SGE Acres Limited

Appellant

v.

Factory Mutual Insurance Company, a body corporate, Martin
Marietta Materials Canada Limited, a body corporate,
Birmingham Construction Limited, Atlantic Sub-Sea
Construction and Consulting Incorporated, Beaver Marine
Limited, a body corporate, and Dywidag Systems International,
Canada, Ltd., a body corporate

Respondents

Judge: The Honourable Justice J.E. (Ted) Scanlan
The Honourable Justice Duncan R. Beveridge (dissenting)

Appeal Heard: January 26, 2015, in Halifax, Nova Scotia

Subject: **Litigation privilege**

Summary: The motions judge denied a request by Hatch Ltd. wherein they asked the judge to order disclosure of documents over which there was an assertion of litigation privilege.

Issue: Did the motions judge err in determining that the materials the applicant sought were protected by litigation privilege?

Result:

The majority concluded that the motions judge did not err in law or make a palpable and overriding error in determining that the documents were subject to litigation privilege.

Beveridge J.A. (in dissent) would have allowed the appeal on the basis that the motions judge erred in law in her application of the test for litigation privilege. She failed to consider the rationale for the privilege. The respondent did not file a proper Schedule B to its Affidavit Disclosing Documents. Based on the record before the motions judge, its claim for privilege was not sustainable.

Appeal dismissed.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 50 pages.