

**CASE NO.**

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**Cite as: Granview Farms Ltd. v. CBCL Ltd., 1998 NSCA 115**

GRANVIEW FARMS LIMITED,  
a body corporate

CBCL LIMITED,  
a body corporate

- and -

(Appellant)

(Respondent)

C.A. No. 143955

Halifax, N.S.

FLINN, J.A.

**APPEAL HEARD:**

April 9, 1998

**JUDGMENT DELIVERED:**

June 9, 1998

**SUBJECT:      **Res judicata - Abuse of Process****

**SUMMARY:**      The appellant sued the respondent for damages in negligence alleging that the respondent knew, and did not advise the appellant, of unusual site conditions at a project on which the appellant was a successful tenderer. On a Chambers application by the respondent, the appellant's action was dismissed on the basis of *res judicata* and abuse of process. The appellant had been unsuccessful in a mechanics lien action against the property owner. In that action the property owner joined the respondent as a third party.

**RESULT:**      Appeal allowed.

1.      *Res judicata* has no application here. The first proceeding was not between the same parties and their privies. Further, no allegation in the second action is inconsistent with findings made in the first action.
2.      Following a detailed review of the facts and circumstances, the Court of Appeal decided that the Chambers judge erred in law by finding that the second action constituted an abuse of process.
3.      A patent injustice would result to the appellant if the appellant was prevented from having the respondent's liability, in negligence, determined following a trial.

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