

**NOVA SCOTIA COURT OF APPEAL**  
**Citation: *Nova Scotia v. Roué*, 2013 NSCA 94**

**Date:** 20130827  
**Docket:** CA 412639  
**Registry:** Halifax

**Between:**

Her Majesty the Queen in right of the Province of Nova Scotia  
And Lengkeek Vessel Engineering Inc., Lunenburg County  
Shipwrights Incorporated, carrying on business as Covey Island  
Boatworks, Lunenburg Foundary & Engineering Incorporated,  
Lunenburg Shipyard Alliance Limited, MHPM Project Managers  
Incorporated, and Snyder's Shipyard Limited

Appellants

v.

Joan Elizabeth Roué and Lawrence James Roué

Respondents

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**Judge:** The Honourable Chief Justice J. Michael MacDonald

**Appeal Heard:** June 11, 2013

**Subject:** Practice; Rule 5.07 Application in Court; Rule 6.02 Motion to Convert; Leave to Appeal – *Judicature Act*, R.S.N.S., 1989, c. 240, s. 40

**Summary:** This litigation involves the schooner *Bluenose*, launched in 1921 in Lunenburg. The respondents are descendants of the vessel's original designer, William J. Roué. As such, they claim copyright interests and moral rights to his design drawings.  
In 1946, the *Bluenose* struck a reef off Haiti and sank. However, in 1963, a *Bluenose II* was constructed, with access to Mr. Roué's original drawings, for which he was compensated. Then, in 1971, ownership of the *Bluenose II* was transferred to the Province. It eventually fell into disrepair.

In 2010, the Province began a project that forms the subject matter of these proceedings. In fact, the actual nature of the project is central to this dispute. For its part, the Province asserts that it is merely restoring its *Bluenose II*. The respondents, however, assert that the Province, with the services of the other appellants, is creating an entirely new vessel based upon the lines of the original *Bluenose*. This, say the respondents, represents an infringement of their copyright and moral rights.

Consequently, the respondents have sued the Province (and other appellants involved in this project) for a variety of remedies including damages. They advanced their claim by way of a Rule 5.07 “application in court”. In response, the appellants filed a preliminary motion to change this application into a traditional action. The appellants also sought to strike (or alternatively to obtain better particulars on) certain portions of the claim. The Supreme Court of Nova Scotia dismissed these motions (2013 NSSC 45).

The appellants, in a joint submission, now ask this Court, firstly, to grant leave to appeal and then to overturn this ruling.

**Issues:**

- (1) Leave to Appeal?
- (2) Did the Court err in denying the Appellants’ motion to convert?

**Result:**

1. Leave to appeal granted only on the motion to convert issue. The remaining grounds of appeal did not raise an “arguable issue”.
2. The motion judge’s comprehensive and careful analysis of the conversion issue was without error.

*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 25 pages.*