

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Burton Canada Company v. Coady*, 2013 NSCA 95

**Date:** 20130828

**Docket:** CA 407433

**Registry:** Halifax

**Between:**

Burton Canada Company

Appellant

v.

Michael Sampson Coady and  
Wentworth Valley Developments Limited

Respondents

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**Judges:** The Honourable Justice Jamie W.S. Saunders  
The Honourable Justice Duncan R. Beveridge Dissenting

**Appeal Heard:** April 11, 2013

**Subject:** **Summary Judgment. Civil Procedure Rule 13. Proper Analytical Framework. Inherent Jurisdiction. Prematurity. Negligence. Causation. Duty of Care. Standard of Care. Breach of Duty. Waiver. Occupier's Liability. Costs.**

**Summary:** A 16 year old boy was paralyzed when he fell and broke his neck while snowboarding. He sued the mountain resort owners as well as the snowboard manufacturer alleging that they were negligent in failing to maintain the site and by enticing him to borrow a professional snowboard without doing anything to verify his age, experience or ability.

Both defendants moved for summary judgment saying there were no material facts in dispute and the plaintiff's claim had

no chance of success. The Chambers judge dismissed the defendants' motions. Burton, the snowboard manufacturer appealed. Wentworth, the ski resort owners did not.

**Held (by the majority):**

Appeal dismissed. On this record the Chambers judge was right to conclude that there were a variety of significant contested questions of fact, mixed law and fact, or inferences to be drawn from disputed facts which were ill-suited to a summary judgment proceeding and would require a trial on the merits to resolve. These disputed facts gave rise to a host of genuine issues which emerged from the cause of action and the defences filed which would include: causation; foreseeability; negligence; duty of care; standard of care; breach of the duty of care; contributory negligence; risk; degree of danger; warning; consent; and waiver. Accordingly, the defendants failed to satisfy their burden during the first stage of the analysis to prove that there were no material facts in dispute. For that reason there was no need to go on to the second stage of the inquiry and decide whether the responding party had met his evidentiary burden of proving that his claim had a real chance of success.

While the Chambers judge erred in ruling, in the alternative, that he still retained a residual inherent jurisdiction under new CPR13.04 to refuse to grant summary judgment on the basis that the motion was premature or that other juridical reasons ought to defeat its being granted, the mistake had no bearing on the outcome in this case.

Finally, there was no cause to intervene in the judge's costs award which reflected a fair and sensible exercise of his discretion.

The majority decision undertook an extensive review of the legal principles which ground motions for summary judgment, their rationale, and the proper analytical framework for their application. A checklist or template was provided to guide counsel and judges in these matters. The court explained that any inherent discretion to refuse summary judgment on the basis of prematurity or some other "just cause" was

relinquished when CPR 13 was amended. If trial judges wished to re-acquire such a broad discretion, the Rule should be rewritten to provide for it explicitly.

Beveridge J.A. (in dissent). The motions judge did not identify any genuine issues of material fact requiring a trial. There cannot be a viable cause of action without a duty of care. Whether a duty of care exists in any particular circumstance is a question of law. Here the circumstances were known. Both the appellant and respondent relied on the circumstances as described in the sworn testimony of the respondent. There was no dispute about the facts. As a matter of law, the appellant owed none of the duties of care alleged by the respondent. The motion for summary judgment should have been granted.

*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 79 pages.*