

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Blunden Construction Ltd. v. Fougere*, 2014 NSCA 52

**Date:** 20140529

**Docket:** CA 423831

**Registry:** Halifax

**Between:**

Blunden Construction Limited

Appellant

v.

William Fougere and  
Fowler, Bauld & Mitchell Limited

Respondents

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**Judge:** The Honourable Mr. Justice Jamie W.S. Saunders

**Appeal Heard:** May 20, 2014

**Subject:** **Summary Judgment. Expert Evidence. Causation. Standard of Care. Civil Procedure Rules 5, 6 and 13. Alternative Adjudicative Dispute Resolution.**

**Summary:** A teacher became seriously ill and disabled with a lung condition he said was caused by hazardous dust left during construction of an elevator hoist inside the school. He sued the construction company which joined an architectural firm as a third party.

The construction company, supported by the architectural firm, moved for summary judgment and a dismissal of the teacher's claim. The judge denied the motion on the basis that there were many important factual issues in dispute which would require a trial to resolve, some of which might well involve an assessment of credibility.

The construction company appealed.

**Held:** Appeal dismissed. The judge was right to find that the motion failed at the first stage of the summary judgment analysis, **Burton Canada Co. v. Coady**, 2013 NSCA 95, and that it was not a case where expert evidence would necessarily be required to assist the judge or jury with the issues of causation and standard of care, **Szubielski v. Price**, 2013 NSCA 151.

The Court went on to explain the link between CPR 13 and CPRs 5 and 6 and how their application will give judges the necessary flexibility to dispose of summary judgment motions and then go on to decide whether those cases which deserve to be heard on their merits ought to be adjudicated in the abbreviated, less rigorous process of an application, or should instead be reserved for the more traditional trial by action format. Such an approach satisfies the Supreme Court of Canada's directions in **Hryniak v. Mauldin**, 2014 SCC 7.

**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 7 pages.**