

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Fraser et al. v. Westminer Canada Ltd. et al.*,  
2003 NSCA76

**Date:** 20030722

**Docket:** CA 189520

**Registry:** Halifax

**Between:**

Sumner M. Fraser, Sumner Capital Limited, William Kitchen, William Mundle, Dr. James Collins, Michael Bradshaw, Dr. Michael Cook, Gloria Coughlan, James Coughlan, Stephen Coyle, in his capacity as the representative of the Estate of Gerald Coyle, Allan Dand, Murray Edwards, James Hartling, Hector Jacques, Harry Kennedy, Doug McCallum, Gerald McCarvill, Roland MacDonald, John Panneton, Robert Peters, Andrew Saulnier, and Dr. Allistair Thomson, and Francis Hutt and Dennis Conolly in their capacities as the representatives of the Estate of Robert Dauphinee, and Joyce Prest in her capacity as the representative of the Estate of Reg Prest and Bryman Enterprises Ltd., a body corporate

Appellants

v.

Westminer Canada Limited, Westminer Holdings Limited, Western Mining Corporation Holdings Limited, James H. Lalor, Peter Maloney, William J. Braithwaite and Colin Wise

Respondents

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**Judge:** CROMWELL, J.A.

**Appeal Heard:** June 16 and 17, 2003

**Subject:** Negligence - Pure Economic Loss - Duty of Care

**Summary:** The respondent corporations intentionally inflicted economic harm on the promoter of a business venture. The unintended, but foreseeable, result was that the appellants, who were investors in

that venture, also suffered economic loss. The appellants sued the respondents for certain intentional torts and negligence. The claims in the intentional torts were dismissed at trial because the judge found the respondents did not intend to injure the appellants. The appellants claim in negligence was dismissed because the judge found that the respondents owed them no duty of care. The appellants appealed only the dismissal of their negligence claim.

**Issue:** Did the judge err in law by finding that the respondents owed the appellants no duty of care?

**Result:** Appeal dismissed. The judge did not err in finding that any duty of care was negated by the policy consideration of indeterminate liability. The judge did err, however, in finding that a *prima facie* duty of care existed. As argued by the respondents, the judge's dismissal of the action should also be upheld on that basis.

**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 39 pages.**