

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** Hogeterp v. Huntley, 2007 NSCA75

**Date:** 20070621

**Docket:** CA 277641

**Registry:** Halifax

**Between:**

Theodore Hogeterp

Appellant

v.

Joellen Lynn Huntley, by her litigation guardian, Byron Huntley,  
Louise Huntley, Andrew Larkin and Karen Larkin

Respondents

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**Judge:** The Honourable Justice Elizabeth A. Roscoe

**Appeal Heard:** June 12, 2007

**Subject:** Summary Judgment - Rule 13.01

**Summary:** In an action claiming that a dog running on a highway caused a motor vehicle accident, the defendant alleged to have owned the dog in question applied for summary judgment. The defendant argued that there was no genuine issue for trial because the plaintiffs could not establish that it was his dog on the road at the time of the accident. The Chambers judge dismissed the application for summary judgment.

**Issue:** Did the Chambers judge err in admitting and relying on an affidavit filed by the plaintiffs? Did the Chambers judge err in the application of the test for summary judgment?

**Result:** Appeal dismissed. It was immaterial that the affidavit was not in proper form. The evidence relied on by the Chambers judge was contained in affidavits filed by the other parties. Summary judgment should not have been granted because there was a genuine issue for trial: was it the defendant's dog on the road at the time of the accident. The plaintiffs had some evidence to support their contention that it was the defendant's dog. It was not for the Chambers judge to resolve the issue of fact by weighing the evidence, drawing inferences or assessing the credibility of the witnesses.

**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 16 pages.**