

**NOVA SCOTIA COURT OF APPEAL**

**Citation: *AMCI Export Corporation v. Nova Scotia Power Incorporated*,  
2010 NSCA 41**

**Date:** 20100511

**Docket:** CA 317561

**Registry:** Halifax

**Between:**

AMCI Export Corporation

Appellant

v.

Nova Scotia Power Incorporated

Respondent

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

**Appeal Heard:** March 25, 2010

**Subject:** **Pre-requisites for Summary Judgment. CPR 13 (1972).  
*Bona Fide* Defence. Contract to Supply and Purchase Coal.  
Proof of the extent and terms of contractual relationship.  
Sequential or Concurrent Obligations. Material Issues in  
Dispute. Credibility. Standard of Review.**

**Summary:** The parties are engaged in protracted litigation over a contract to supply and purchase coal, signed in 2001. NSPI sued AMCI for damages said to exceed \$11M spent to acquire replacement coal as a consequence of AMCI's alleged failure to supply coal as contracted. In its amended defence, AMCI pleaded that to the extent it did not provide coal as required, NSPI should not be entitled to damages as NSPI did not have ships under contract at the relevant times to be able to take delivery. The Chambers judge granted NSPI summary judgment, effectively striking out this key component of AMCI's defence. AMCI appealed.

**Held:** Appeal allowed, lower court order set aside, thus restoring the impugned paragraph in the amended defence and permitting AMCI to rely upon it.

The Chambers decision lacked any analysis of the requisite legal principles and their application to the issues and the evidence. Simply stating a conclusion without explaining the reasoning which led to its formation does not permit a proper testing of the correctness of the analysis. These failings constitute an error of law leading to an injustice.

There are a host of significant and hotly contested issues of fact, of credibility, of proof, of contractual interpretation, of law, and of mixed law and fact, which will require a full trial on the merits.

**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 14 pages.**