## NOVA SCOTIA COURT OF APPEAL

Cite as: Rogers v. Sears Canada Inc., 1993 NSCA 16

Matthews, Chipman and Roscoe, JJ.A.

## **BETWEEN:**

ELIZABETH ROGERS		<ul><li>Jean McKenna</li><li>for the Appellant</li></ul>
	Appellant	)
- and - SEARS CANADA INC.		) .Cathy L. Dalziel for the Respondents
	Respondents	) Appeal Heard: ) February 5, 1993
		Judgment Delivered: February 5, 1993
		) ) )
		) )

THE COURT: Appeal dismissed with costs which are 40% of those agreed upon by counsel at trial, plus the appeal disbursements per oral reasons for judgment of Matthews, J.A.; Chipman and Roscoe, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

MATTHEWS, J.A.:

This appeal in essence involves the decision of the trial judge dismissing a claim in occupiers' liability against the respondent. We have studied the record, the factums of counsel and have heard oral argument. It is our unanimous opinion that the trial judge made no error in the application of the law nor did he make any palpable or manifest error of fact which would permit this court to overturn his conclusions in respect to liability or his provisional assessment of damages.

We dismiss the appeal with costs which are 40% of those agreed upon by counsel at trial, plus the appeal disbursements.

J.A.

Concurred in:

Chipman, J.A.

Roscoe, J.A.

S.C.A. No. 02711

NOVA SCOTIA COURT OF APPEAL

## **BETWEEN**:

## ELIZABETH RODGERS

- and - FOR BY: SEARS CANADA INC.	Appellant	)	REASONS
	Respondents	)	JUDGMENT  Matthews, J.A.