

## Toxic Mould Case Dismissed

**Defendants' Counsel: Corinne S. Petersen and Debra G. Woodske  
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On March 29, 2006, the Court of Queen's Bench of Alberta dismissed a claim for injuries arising out of an alleged exposure to toxic mould and other airborne contaminants at her place of employment. The Plaintiff alleged, among other things, that her employers failed to provide a safe work environment thereby breaching its contractual obligations to her, that they were negligent in conducting renovation activities during work hours and that they breached the *Occupational Health and Safety Act*. As a result of this exposure, the Plaintiff claimed that the exposure to the contaminants caused her to develop health and respiratory problems which prevented her from working, engaging in activities requiring prolonged exertion and restricted her in her daily activities.

In dismissing the case, Justice Burrows held that the Plaintiff had not proved on a balance of probabilities that the contaminants she was exposed to in the workplace caused her respiratory problems. He further held that the Plaintiff had not proved that the air quality in the workplace materially contributed to the cause of her illness. Justice Burrows stressed that he attempted to deal with the question of causation as "essentially a practical question of fact which can best be answered by ordinary common sense rather than abstract metaphysical theory..." (*Alphacell Ltd.v. Woodward*, [1972] 2 All E.R. 475 as quoted in *Snell v. Farrell*, [1990] 2 S.C.R. 311.). Justice Burrows further held that the evidence did not justify the conclusion that the Plaintiff would not have developed her illness but for the exposure to the air in the workplace (*Athey v. Leonati* [1996] 3 S.C.R. 458). The Plaintiff attempted to argue the thin skull principle was applicable, but this too was rejected by Justice Burrows.

Once Justice Burrows dismissed the Plaintiff's claim based on his findings on causation, he did not deal with the other elements of the claim, though he did note that there was no breach of the *Occupational Health and Safety Act*.

Costs were awarded to the Defendants.

*Stucke v. Richard McDonald & Associates Ltd. et al.*, 2006 ABQB 239  
Heard: October 17, 2005 to November 3, 2005 and November 8, 2005  
Judgment: March 29, 2006  
Burrows, J.