

CASE NO.**VOL. NO.****PAGE**

LILLIAN WILLIAMS

THE TOWN OF MULGRAVE and
THE CANADIAN NATIONAL RAILWAY

- and -

(Appellant)

(Respondents)

CA 153828

Halifax, N.S.

CROMWELL, J.A.

[Cite as: Williams v. Mulgrave (Town), 2000 NSCA 24]**APPEAL HEARD:**

November 25, 1999

JUDGMENT DELIVERED:

February 3, 2000

SUBJECT:**Limitation of Actions - Trespass - Easements****SUMMARY:**

The appellant acquired a lot at Mulgrave in 1939 and later discovered that there was a drain going through the property. She thought it originated on the adjoining CN right-of-way. Over the years, she contacted CN from time to time to complain about the state of the drain and about drainage problems. CN responded by sending out crews to make repairs. Much later, the appellant learned that CN had no agreement entitling it to run a drain through her property. CN's position was that the drain was not theirs and that they effected repairs only out of good will. In 1997, the appellant commenced an action against CN and the Town of Mulgrave (which had purchased the CN right-of-way in 1996) claiming in nuisance, negligence and trespass in relation to the presence of the drain on her property and drainage problems she alleged resulted from it. It was agreed that two issues would be determined before trial: first, whether her claims had been resolved by agreement reached between her former solicitor and a solicitor for CN prior to the commencement of the action; and second, whether her action was statute barred. It was determined by the judge that the settlement barred her actions in negligence and nuisance but not in trespass but that the action in trespass was statute barred. The appellant appealed the finding that her claims in nuisance and negligence had been settled by the agreement and the finding that her action in trespass was statute barred. The respondents contended that the agreement covered all of her claims and, in any event, they had acquired an easement for the drain.

ISSUES:

1. Did the trial judge err in finding that the claims in negligence and

nuisance had been settled by agreement and in finding that the action in trespass was not settled?

2. Was the claim in trespass statute barred?
3. Had CN (and the Town) established an easement in relation to the drain?

RESULT:

The trial judge's findings with respect to the agreement were upheld. His finding that the action in trespass was statute barred was set aside because a trespass of this character is a continuing trespass so that for limitation purposes a new cause of action arises each day the drain is not removed. As for the easement, the trial judge did not make findings in relation to this point and the record did not permit the Court of Appeal to conclude that an easement had been established.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 18 pages.