

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Barry v. Halifax (Regional Municipality)*, 2018 NSCA 79

**Date:** 20181011

**Docket:** CA 469410

**Registry:** Halifax

**Between:**

Mary Paula Barry

Appellant

v.

Halifax Regional Municipality

Respondent

and

Royal & Sun Alliance Insurance Company of Canada

Respondent/Appellant by Cross-Appeal

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**Judge:** The Honourable Justice Cindy A. Bourgeois

**Appeal Heard:** June 13, 2018

**Subject:** Addition of party – Rules 35.08 and 83.04; Disallowance of limitation defence – s. 12 of *Limitation of Actions Act*, S.N.S. 2014, c. 35

**Summary:** Ms. Barry alleges she was injured on a Halifax transit bus. She says the bus driver unexpectedly slammed on the brakes due to being cut off by an unidentified motorist, causing her to be flung from her seat.

In 2015, Ms. Barry brought an action against the Halifax Regional Municipality (HRM). In November 2016, Ms. Barry brought a motion seeking to add HRM’s transit insurer, Royal & Sun Alliance Insurance Company of Canada (RSA) as a defendant.

The motions judge concluded that Rule 35.08 precluded the addition of a party if a limitation period was expired. She

further concluded that she was unable to consider disallowing RSA's limitation defence under s. 12 of the *Limitation of Actions Act*, S.N.S. 2014, c. 35. The motion was dismissed.

Ms. Barry appeals. RSA cross-appeals in relation to the motions judge's interpretation of s. 12 of the *Limitation of Actions Act*.

**Issues:**

- (1) Did the motions judge err in conducting a limitation analysis, as opposed to leaving that for the trial judge?
- (2) Did the motions judge err in her discoverability analysis?
- (3) Did the motions judge err in her interpretation of s. 12(1) of the *Act*? and
- (4) In provisionally disallowing RSA's limitation defence, did the motions judge err in her application of s. 12(3) and (5) of the *Act*?

**Result:**

The motions judge did not err in conducting a limitation analysis. Rule 35.08 prohibits the addition of a party if a limitation period has expired, therefore she was required to consider it.

The motions judge did not err in her discoverability analysis, in particular, her conclusion that HRM had no obligation to advise Ms. Barry of the existence of Section D coverage.

The motions judge did not err in her interpretation of s. 12(1) of the *Limitation of Actions Act*. Her determination that the limitation period proscribed by the Standard Automobile Policy was not established "by enactment" was incorrect. The appeal was allowed on this ground.

On the cross-appeal, the motions judge failed to consider all of the factors contained in s. 12(5) of the *Limitation of Actions Act*. The cross-appeal was allowed.

Notwithstanding the appeal being allowed in part and the cross-appeal allowed, the motions judge's conclusion remained intact. RSA was not joined as a defendant.

*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 24 pages.*