

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** A.B.C. v. Nova Scotia (Attorney General), 2011 NSSC 475

**Date:** 20111223

**Docket:** Hfx. No. 262658

**Registry:** Halifax

**Between:**

A.B.C.

Plaintiff

v.

The Attorney General of Nova Scotia, representing Her Majesty the Queen in  
Right of the Province of Nova Scotia

Defendant

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**LIBRARY HEADING**

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**Restriction on Publication:** Restriction on publication of plaintiff's name under  
*Civil Procedure Rules* 85.04(1) and (2) and  
85.05(1) and (2).

**Judge:** The Honourable Justice A. David MacAdam

**Heard:** September 19, 20, 21, 22, 26, 2011, in Halifax, Nova Scotia

**Final Written  
Submissions:** December 7, 2011

**Subject:** limitations, historic sexual assault

**Summary:** The plaintiff was sexually assaulted by a probation officer and commenced an action against the Province, which admitted liability, but raised a limitations defence. The plaintiff was repeatedly sexually abused by his probation officer, CL, in 1984 and 1985, when the plaintiff was between 14 and 16 years old. He commenced a proceeding for damages against the defendant Attorney General, as the probation officer's employer, in February 2006. The defendant acknowledged vicarious responsibility in respect of sexual assault. Shortly before trial, the issue of damages was resolved between the parties. The only outstanding issue was the defendant's

assertion that the claim was statute-barred.

**Issue:** Had the limitation period expired, and, if so, should the limitations defence be disallowed?

**Result:** While the basic limitation period had passed, the plaintiff relied on provisions of the Limitation of Actions Act permitting the court to disallow a limitations defence, particularly s. 2(5), which provided that in an action based on sexual abuse, the cause of action does not arise until the person is aware of the injury or harm resulting from the sexual abuse and the causal relationship between the injury or harm and the abuse, and further that the limitation period does not begin to run while the person is not reasonably capable of commencing a proceeding because of the person's physical, mental or psychological condition resulting from the sexual abuse. The plaintiff knew it was CL who was assaulting him and knew that it was wrong. He knew he had a right to sue CL. He may not have known that he had a right to sue the defendant as well, but it was the discovery of the facts that started the time running, not the discovery of the applicable law. This met the requirements of discoverability. While there was evidence of the effect the assaults had on the plaintiff, it appeared that he had not spoken of the details of the assaults until 2007, other than to the police in respect of criminal charges against CL. His psychological inability to come forward meant that he had been not reasonably capable of commencing a claim up to the point when he did so. Alternatively, if he could be said to be reasonably capable of commencing a claim in 2004, after CL's guilty plea, the court would have exercised its discretion to extend the limitation period for up to four years. Accordingly, the limitations defence was struck.

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