

CASE NO. VOLUME PAGE
Cite as: Marwieh v. Brown, 1995 NSCA 176

GEORGE MARWIEH KENNETH T. BROWN AND
PATRICIA K. BROWN
(Appellant) - and - (Respondents)
C.A. No. 117141 Halifax, N.S. BATEMAN, J.A.
(orally)

APPEAL HEARD: October 16, 1995

JUDGMENT DELIVERED: October 16, 1995

WRITTEN RELEASE OF ORAL: October 17, 1995

SUBJECT: **Res judicata**

SUMMARY: Plaintiffs in an action arising from a motor vehicle action successfully applied to Chambers to disallow the defence of limitation. Upheld on appeal. Subsequently the Supreme Court of Canada in **Tolofson v. Jensen**, [1994] 3 S.C.R. 1022 changed the law. Respondents applied to Chambers judge to strike the Statement of Claim on the basis that it was issued beyond the Alberta limitation period. Chambers judge declined to strike the Statement of Claim, applying cause of action estoppel (**res judicata**).

ISSUE: Did the Chambers judge err in holding that the issue was by **judicata**.

RESULT: Cause of action estoppel is an absolute bar in circumstances where the same issue has been adjudicated upon in the same action. Appeal dismissed.