

<u>CASE NO.</u>	<u>VOL. NO.</u>	<u>PAGE</u>
MARITIME LIFE ASSURANCE COMPANY	- and -	CHARLENE MYERS
(Appellant)		(Respondent)
	- AND -	
CHARLENE MYERS	- and -	MARITIME LIFE ASSURANCE COMPANY
(Appellant)		(Respondent)
CA 170786	Halifax, N.S.	CROMWELL, J.A. (Orally)

[Cite as: Myers v. Maritime Life Assurance Company, 2001 NSCA 93]

APPEAL HEARD: June 6, 2001

JUDGMENT DELIVERED: June 6, 2001

WRITTEN RELEASE OF ORAL: June 7, 2001

SUBJECT: **Limitation of Actions - claim on disability policy - application to strike out statement of claim on basis of limitation defence**

SUMMARY: Ms. Myers sued Maritime Life for alleged breach of a disability insurance policy. The insurer moved to strike the statement of claim on the basis that the action was statute barred and Ms. Myers applied to strike paragraph 7 of the Defence which set out the limitation defence. The chambers judge dismissed both applications. Maritime Life applied for leave to appeal and Ms. Myers applied for leave to cross-appeal.

ISSUES:

1. Did the chambers judge err in refusing to strike out the statement of claim on the basis of the limitation defence?
2. Did the chambers judge err in refusing to strike out paragraph 7 of the defence?

RESULT: Leave to appeal granted but appeal dismissed and leave to cross-appeal denied. The facts pleaded in the statement of claim did not make it clear that the limitation period with respect to the claim on the policy had expired. There are novel questions of law and significant questions of fact

with respect to when time begins to run against the plaintiff such that the claim is not “obviously unsustainable”. With respect to striking out paragraph 7 of the Defence, that paragraph places a time limitation defence in issue and should not be struck.

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 3 pages.