

**CASE NO.**

**VOL. NO.**

**PAGE**

**FLORA BURT and  
SHELLEY DAWN SEWARD**

- and -

**HOWARD LeLACHEUR**

(Appellants)

(Respondent)

**CA161675**

Halifax, N.S.

**Chipman, J.A.**

---

[Cite as: *Burt v. LeLacheur*, 2000 NSCA 90]

**APPEAL HEARD:**

June 13, 2000

**JUDGMENT DELIVERED:**

July 28, 2000

**SUBJECT:**

**LIMITATION OF ACTIONS - application to disallow defence based on limitation - dismissal of action in consequence thereof - discoverability rule.**

**FATAL INJURIES ACT - whether discoverability rule applies to s. 10 which requires an action to be brought within one year of the death of the deceased person.**

**SUMMARY:**

The appellants are the widow and daughter respectively of Vincent LeLacheur who was killed in a motor vehicle accident on August 12, 1972. The appellant, Flora Burt, maintained that she had assumed that Vincent LeLacheur was operating the motor vehicle at the relevant time until, in February of 1997, she was told that the respondent was operating the motor vehicle at the time. In July of 1997 an action was commenced on behalf of both appellants against the respondent under the **Fatal Injuries Act**. A defence was filed on the respondent's behalf by Judgment Recovery N.S. Ltd. pleading *inter alia* that the action was barred by limitation. The respondent relied on s. 10 of the **Fatal Injuries Act** providing that an action must be brought within 12 months of the death of the deceased person. On an application by the appellants to disallow the defence of limitation, the chambers judge refused to disallow the defence and dismissed the action. The appellants appealed to the Court of Appeal.

**ISSUES:**

Whether the discoverability rule applied to s. 10 of the **Fatal Injuries Act** and whether the trial judge was correct, in any event, in refusing to

disallow the defence based on limitation.

Whether the trial judge was correct in dismissing the action.

**RESULT:**

The court of appeal reviewed the authorities and concluded the discoverability rule applied to s. 10 of the **Fatal Injuries Act**. However, the plea of limitation should not have been disallowed as it was an issue for trial upon the application of the discoverability rule whether the action was barred by s. 10 of the **Fatal Injuries Act**. The action should not have been dismissed. The appeal was allowed to the extent of setting aside this part of the order. Costs of the appeal were fixed at \$1,500. plus disbursements and were ordered to be in cause.

**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 23 pages.**