

**NOVA SCOTIA COURT OF APPEAL**

**Citation: *Garth v. Metro Transit*,  
2006 NSCA 89**

Date: 20060720

**Docket:** CA 259105

**Registry:** Halifax

**Between:**

Christopher Robin Garth

Appellant

v.

The Halifax Regional Municipality  
carrying on business as Metro Transit

Respondent

---

**Judge:** The Honourable Justice Thomas Cromwell

**Appeal Heard:** May 26, 2006

**Subject:** Amendments to add parties and causes of action – expiry of limitation period – **Rule 15**; notice to proposed defendant

**Summary:** Mr. Garth applied to add the defendant's Section D insurer in order to add a cause of action against an unidentified driver. The limitation period for suing under Section D had expired and no notice of the application to add the insurer was given to it. The chambers judge held that he had no discretion to grant the amendment and dismissed the application. Mr. Garth sought leave to appeal.

**Issues:**

1. Did the judge have discretion under **Rule 15** to grant the amendment?
2. If so, should the Court of Appeal grant the amendment?

**Result:** Leave granted and appeal allowed. The judge had a discretion to grant the amendment even though the case did not fall within any of

the specific situations set out in **Rules** 15.02(2) or 15.02(3). However, the appellant should have given notice of the application to the insurer. The appellant would therefore be entitled to renew the application for the amendment in Supreme Court chambers on notice to the proposed, as well as the existing, 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 14 pages.**