

CASE NO. VOL. NO. PAGE  
**THE HALIFAX INSURANCE COMPANY** **ANTHONY JOSEPH METLEGE**  
(Appellant) - and - (Respondent)

C.A. No. **145118** Halifax, N.S. **PUGSLEY, J.A.**

Cite as: Halifax Insurance Company v. Metlege, 1998 NSCA 135

**APPEAL HEARD:** May 27, 1998

**JUDGMENT DELIVERED:** July 28, 1998

**SUBJECT:** **Practice C.P.R. 18 - Examination for Discovery**

**SUMMARY:** The plaintiff alleged that in October, 1995 he purchased a motor vehicle by paying over \$35,000 in \$100 bills to a "stranger" who had delivered the vehicle to his residence in Halifax. The plaintiff delayed in arranging insurance with the defendant until February 1996. In October, 1996 the plaintiff alleged that the vehicle was stolen from his garage. The defendant's investigation disclosed that the vehicle had been stolen and was currently owned by a person resident in British Columbia. The defendant rejected the proofs of loss filed by the plaintiff. Action was commenced on December 23, 1996. The defendant pleaded in part that the plaintiff "knew or ought to have known" that the vehicle was a stolen vehicle.

On an examination for discovery of the defendant's claims representative, counsel objected to questions by plaintiff's counsel on the ground that the information developed in support of the answers was obtained by counsel during the course of his investigation to defend the action. The Chambers judge concluded that privilege did not arise until action was commenced on December 23, 1996, that the insurer was obliged to disclose the facts on which it relied in support of its allegation that the plaintiff should have known his motor vehicle was stolen at the time of purchase, and further, that the insurer was required to disclose the name, and address, of any person who suggested the plaintiff may have paid less than \$35,000 for the vehicle.

**ISSUE:** Whether the Chambers judge erred in law.

**RESULT:**

The Court unanimously concluded that the appeal should be dismissed. In exercising her discretion that privilege only arose at the time action was commenced, the Chambers judge committed no error of principle, nor would a patent, or any, injustice result if the Court failed to interfere with that determination.

Privilege cannot be used to protect facts from disclosure if those facts are relied upon by a party in support of its trial position. It is immaterial that the fact was discovered by a party at the direction of its solicitor, or even by the solicitor independently.

Under the Nova Scotia **Civil Procedure Rules**, a party is not obliged, generally, to disclose the names of witnesses, or the manner in which counsel is going to prove its case. This, however, was an exception to that rule as the identity of the witness itself constituted a material fact. When the distinction between disclosure of facts on which a party relies, and the evidence in support of the fact, is a "very fine" distinction, resolution should favour disclosure.

**This information sheet does not form part of the court's decision. Quotes must be from the decision, not this cover sheet. The full court decision consists of 15 pages.**