

CASE NO.

VOLUME

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Cite as: Boulton v. Brett, 1998 NSCA 222

ANTHONY & BOULTON
and JAMES N. HORWICH

BRUCE R. BRETT

- and -

(Appellants)

(Respondent)

C.A. No. 149502

Halifax, N.S.

Glube, C.J.N.S.
(orally)

APPEAL HEARD:

December 7, 1998

JUDGMENT DELIVERED:

December 7, 1998

WRITTEN RELEASE OF ORAL:

December 11, 1998

SUBJECT:

Limitation of Actions defence - Application to strike under Civil Procedure Rule 14.25 or Limitations of Actions Act, R.S.N.S. 1989, c. 258 - Application for security for costs, Civil Procedure Rule 42.01.

SUMMARY:

The respondent commenced an action beyond the 6 year limitation period. Appellants' defence, in part, pleaded the **Limitation of Actions Act**, R.S.N.S. 1989, c. 258. The respondent had previously joined the appellants as third parties in an earlier action, which was within the limitation period, but discontinued that action after filing a professional complaint against the individual appellant. The chambers judge held the action was substantially out-of-time, but allowed the action to proceed under s. 3(2) of the **Act** and refused to order security for costs.

ISSUES:

1. Did the Learned Chambers Judge err in exercising his discretion so as to disallow the Appellants' limitation defence?
2. In the alternative, did the Learned Chambers Judge err in declining to order that this proceeding should be stayed pending Brett posting security for costs?

RESULT: The orders are discretionary. No error in principle nor any manifest injustice. Appeal dismissed without costs. Appellants may bring a further application for security for costs if additional cogent evidence on the relevant issue is developed. (**Motun (Canada) Ltd. et al. v. Detroit Diesel-Allison Canada East** (1998), 165 N.S.R. (2d) 217.)

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 4 pages.