

SUPREME COURT OF NOVA SCOTIA

Citation: Smith v. Atlantic Wholesalers Ltd., 2012 NSSC 14

Date: 20120110

Docket: Syd No. 115217

Registry: Sydney

Between:

Beverly Smith

Plaintiff

and

Atlantic Wholesalers Limited, carrying on business
as Super Valu

Defendant

and

APM Construction Services Inc.

Third Party

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Judge: The Honourable Justice Michael J. Wood

Heard: December 6, 2011 (in Chambers), in Halifax, Nova
Scotia

**Final Written
Submissions:** December 13, 2011

Written Decision: January 10, 2012

- Subject:** Limitation of Actions - *Stare Decisis*
- Summary:** The defendant sued the third party ten years after the events giving rise to the plaintiff's claim. The third party applied for summary judgment on the basis that the limitation period had expired.
- Issue:** When does the limitation period begin to run for a third party claim for contribution and indemnity?
- Result:** There is conflicting jurisprudence dealing with commencement of limitation periods for third party indemnity claims. A 1977 Nova Scotia Court of Appeal decision is contrary to an earlier Supreme Court of Canada case on the issue. The Supreme Court of Canada decision should be applied as the Nova Scotia Court of Appeal decision was made *per incuriam*. As a result, the limitation for the third party action is the same as that for the plaintiff's claim against the party. Limitation period had expired and third party action was dismissed.

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QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***