SUPREME COURT OF NOVA SCOTIA
Citation: Wamboldt Estate v. Wamboldt, 2018 NSSC 163

Date: 20180705
Docket: Bridgewater No. 459126
Registry: Bridgewater

Between:

Michael B. Dockrill, in his personal capacity as the Executor of the estate of Reginald McKean Wamboldt, deceased

Plaintiff

v.

Reginald Leland Wamboldt, also known as "Reginald Wamboldt JR"

Defendant

LIBRARY HEADING

Judge: The Honourable Justice Mona M. Lynch

Heard: May 14, 2018 in Bridgewater, Nova Scotia

Written Decision: July 5, 2018

Subject: Choice of law; Limitation of Actions; Amendment to Pleadings

Summary: The plaintiff started an action seeking an accounting from the defendant for funds he dealt with as Attorney for his deceased father under a Continuing Power of Attorney. The defendant made an unsuccessful attempt to have Nova Scotia found *forum non conveniens*. The plaintiff made a motion to have the pleadings amended to add new causes of action and to add a new party. The defendant made a motion to find that the choice of law was Ontario and that both the action and amendments were statute barred.

Issues:

(1) What is the proper choice of law?

(2) Are the action and amendments statute barred?

(3) Should the amendments be made?

Result: It is difficult to determine the site of the torts alleged but the harm is being felt in Nova Scotia. Nova Scotia is the proper law. The action and amendments are not statute barred. The addition of a new party is statute barred. The amendments sought, with the exception of the new party, are granted.

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Counsel: Rubin Dexter and Benjamin Carver, for the Plaintiff
Timothy C. Matthews, Q.C., for the Defendant

By the Court:

Background:

[1] Michael B. Dockrill, the plaintiff, in his representative capacity as the executor of the estate of Reginald McKean Wamboldt, the deceased, started an action on January 9, 2017, against the defendant, Reginald Leland Wamboldt, son of the deceased. The statement of claim makes a claim for a full and complete accounting of all the defendant's dealings in connection with the property of the deceased under a Continuing Power of Attorney. The plaintiff alleges a breach of the defendant's fiduciary duty to the estate.

[2] The defendant filed a statement of defence on February 16, 2017, indicating that: the defendant did not submit to the jurisdiction of the court; *forum non conveniens*; Ontario was the proper choice of law; the action was statute barred, etc.; and denying all allegations in the statement of claim. In a decision dated November 7, 2017 (*Wamboldt Estate v. Wamboldt***,** 2017 NSSC 288), the court found that Ontario was not a more appropriate forum to hear the proceeding and dismissed the defendant's forum motion.

[3] On January 31, 2018, the plaintiff filed a notice of motion to amend the style of cause and statement of claim to add Kathleen Hartley, the defendant's sister, as a party. The plaintiff seeks to amend the action and statement of claim to add new causes of action against the defendant, plead new material facts in support of the new causes of action and add Kathleen Hartley as a party.

[4] On April 3, 2018, the defendant filed a notice of motion asserting that: (a) the law of Ontario is the proper choice of law governing the Continuing Power of Attorney for Property dated March 18, 2009, granted by the deceased to the defendant; (b) the action is statute barred under the law of Ontario; and in particular, any amendment to the statement of claim to add a new party is statute barred by the law of Ontario; and (c) in the alternative, any amendment to the statement of claim to add a new or different cause of action or to add a new party is statute barred by the law of Nova Scotia.

[5] The motions were heard on May 14 and 16, 2018. Kathleen Hartley was represented by counsel at the hearing to oppose being added as a defendant and to oppose the amendments to the statement of claim, but did not provide evidence. Reginald Leland Wamboldt and Michael Dockrill gave evidence.

Issues:

[6] (a) What is the law governing the validity of the Continuing Power of Attorney executed by the deceased on May 18, 2009, under the *Substitute Decisions Act, 1992,* S.O. 1992, c. 30?

(b) What is the applicable law?

(c) Is the original Notice of Action statute barred?

(d) Are the proposed amendments to the Notice of Action and Statement of Claim statute barred in relation to the present defendant?

(e) Are the proposed amendments to the Notice of Action and Statement of Claim statute barred in relation to Ms. Hartley?

(f) Should the plaintiff's proposed amendments be allowed?

Analysis:

What is the law governing the validity of the Continuing Power of Attorney executed by the deceased on May 18, 2009, under the *Substitute Decisions Act, 1992,* S.O. 1992, c. 30?

[7] The statement of claim alleges that the Continuing Power of Attorney for Property, dated March 18, 2009, is invalid. The plaintiff has, quite rightly, agreed that the law governing the validity of the Continuing Power of Attorney for Property is the *Substitute Decisions Act* of Ontario. If the Continuing Power of Attorney is valid, the law of Ontario would apply.

What is the applicable law?

[8] The cause of action originally pleaded was breach of a fiduciary duty for failing to account to the estate for his actions as attorney for the deceased. The proposed amendments would include causes of action for conversion and breach of fiduciary duty based on the conversion. They also seek to plead new material facts in support of the new causes of action.

[9] Prior to deciding whether the amendments sought by the plaintiff can be made, it must be determined whether the action is statute barred (*Automattic Inc. v.*

Trout Point Lodge Ltd., 2017 NSCA 52, para. 38). Determining whether the action is statute barred requires a determination as to whether the limitation period of Ontario or Nova Scotia applies.

[10] The defendant submits that all the claims and causes of actions are governed by the law of Ontario. The plaintiff submits that the issue of the legal force and effect of the Continuing Power of Attorney is governed by the substantive law of Ontario, but the new causes of action are governed by the substantive law of Nova Scotia.

[11] Limitation periods are matters of substantive law (*Tolofson v. Jensen; Lucas (Litigation Guardian of) v. Gagnon*, [1994] 3 SCR 1022; *Limitations of Actions Act*, SNS 2014, c. 35, s. 7). The choice of law analysis is set out in *Coady v. Quadrangle Holdings Ltd.*, 2015 NSCA 13, at para. 63 as:

> [63] The choice of law analysis involves three steps:
>
> 1. Characterization of the question or issue to be decided;
>
> 2. Selection of the "connecting factor" which connects the legal question with the law of a particular place; and
>
> 3. Application of the law selected to the facts of the case.

[12] Characterization of the question or issue to be decided was described in *Coady, supra* at para. 64:

> [64] Consideration of the pleadings is part of the first step in the choice of law analysis, but it is not the exclusive inquiry undertaken by the court. As the Ontario Court of Appeal recently observed in *Aldo Group Inc. v. Moneris Solutions Corporation*, 2013 ONCA 725 at ¶32:
>
> [32] In my view, the motion judge did not err in his approach to the characterization of Aldo's claim. The motion judge expressly stated and applied the Weber test, adapted to the circumstances. ***He began with a plain reading of Aldo's pleading. Consistent with Weber, having considered the alleged wrongs as pleaded, the motion judge also considered the underlying factual dispute.*** The motion judge specifically acknowledged that Aldo's claim engages the imposition and collection of the Assessments by MasterCard. He considered that Aldo's claim against Moneris engages the question of whether the security breach constituted an ADC Event for the purposes of the Assessments, and that the claim against MasterCard draws on the same events. In so doing, the motion judge turned his mind to the contractual context giving rise to the conduct Aldo impugns. It is true that the motion judge did not consider the underlying facts in a vacuum, but I do not believe that ***the essential***

> ***character of Aldo's claim can be discerned solely by reference to the facts; some attention must also be paid to the legal context.***
>
> [Emphasis in original]

The nature of both the original causes of action and the proposed amendments are the breach of fiduciary duty and the tort of conversion. The plaintiff alleges that the current defendant acted under a trading authorization and a Continuing Power of Attorney to deal with the assets of the deceased, and that in dealing with the assets, he converted them to his own use and breached his fiduciary duty.

[13] *Tolofson, supra,* set the law of the place of the tort as the choice of law test. However, the Supreme Court of Canada also noted that there may be circumstances where the act occurs in one place, but the consequences are directly felt elsewhere, and it may be in such cases that the consequences would be held to constitute the wrong. It was also noted that the wrong can directly arise out of interprovincial activity. Courts have held that the wrong occurred where the injury occurred (*Leonard v. Houle*, 1997 36 OR (3d) 357 (Ont.C.A), leave to appeal denied [1998] S.C.C.A. No. 19).

[14] In the recent case of *Haaretz.com v. Goldhar*, 2018 SCC 28, Côté J., speaking for the majority on this point, said:

> [84] This Court, in *Tolofson*, established *lex loci delicti*, or the place where the tort occurs, as the general principle for determining choice of law (p. 1050). This rule is meant to ensure "certainty, ease of application and predictability" (*Tolofson*, at p. 1050).
>
> [85] This Court did, however, leave the door open to carefully defined exceptions to this rule, particularly if the place where the tort occurs differs from the place where its consequences are felt...

[15] Here the allegation is that the present defendant went with his father, the deceased, to the Halifax office of Edward Jones in September 2008, shortly after the death of his father's wife. There, the deceased signed a trading authorization appointing the present defendant as his agent in relation to the deceased's investment accounts. The securities were liquidated at the beginning of October 2008, resulting in proceeds of approximately $570,000. The present defendant gave conflicting evidence as to what happened to these funds. In August 2017, he testified that the funds from Edward Jones went to an investment account in the deceased's name at TD Waterhouse which was managed in Alberta, and then into

the present defendant's account. In April 2018, he testified that the funds from Edward Jones went into the deceased's Bank of Nova Scotia account. He was consistent that, either way, the funds were then divided between his siblings and himself at the direction of the deceased.

[16] In September 2008, the present defendant and his sister, Kathleen Hartley, sought advice as to how to deal with their father, the deceased's, financial affairs. An application was started in Nova Scotia to have the deceased declared incompetent and have the present defendant and Ms. Hartley appointed as his guardians. In aid of that application, two doctors provided opinion letters in September 2008, indicating the deceased was incapable of managing his affairs. One of the doctors clearly stated that, in his opinion, the deceased was not able to understand "the concept or implications of a Power of Attorney on even a basic level", and concluded, "I do not believe he is medically capable of signing a Power of Attorney document". The present defendant was aware of the medical opinions in September 2008. The deceased moved to Ontario with Ms. Hartley in late September or early October 2008. The deceased signed a Continuing Power of Attorney in Ontario on March 18, 2009, appointing the present defendant as his attorney for property.

[17] In September 2011, there were actions taken to appoint a guardian for the deceased in Ontario, however, he died on November 29, 2011, before that matter was completed. The deceased's will directed that the present defendant, Ms. Hartley, and two nephews would receive a maximum of $40,000 each. The deceased's other son was to receive $5,000. The rest and residue of the estate was to be divided among four charities. The Court of Probate for Nova Scotia granted probate in the estate of the deceased on October 25, 2013. Both before and after Probate was granted, the estate sought an accounting from the present defendant for his dealings while acting as attorney for the deceased. The accounting was requested when the plaintiff was preparing the estate inventory. Requests for an accounting were made in July 2012, on August 7, 2013, and on February 12, 2014. The present defendant provided an accounting in May 2014, showing revenue and expenses. On December 15, 2014, the plaintiff requested further detail, supporting documents, information about the Edward Jones accounts funds, etc. On May 12, 2015, litigation counsel for the plaintiff wrote to the present defendant requesting the documentation and indicated that failing receipt of that, a motion would be made for an order compelling an accounting. On June 10, 2015, counsel for the present defendant responded, indicating that any court application would be contested.

[18] The present defendant lives in Alberta. Ms. Hartley lives in Ontario and the deceased lived in Ontario for the last three years of his life. The estate is being probated in Nova Scotia.

[19] The agreement that the law of Ontario will be used to determine the validity of the Continuing Power of Attorney does not mean that Ontario law governs all of the issues.

[20] The location where the alleged tort of conversion or breach of fiduciary duty occurred is not an easy determination. Funds went from Edward Jones in Halifax to either a Bank of Nova Scotia account or a TD Investment Account, both of which were being managed in Alberta. Funds were distributed to the present defendant and his siblings in Ontario, Alberta, and the United States. The present defendant was acting under a Trading Authorization signed in Nova Scotia and a Continuing Power of Attorney signed in Ontario.

[21] The present defendant's position is that the proper choice of law is Ontario. The plaintiff's position is that the proper law is Nova Scotia. No one is asking that the proper law be found to be Alberta.

[22] The connecting factors to Ontario are that it is where the deceased lived for the last three years of his life; that is where the Continuing Power of Attorney was signed; and that is where Ms. Hartley lives.

[23] The connecting factors to Nova Scotia are that the investment accounts were in Nova Scotia; the Trading Authorization was signed in Nova Scotia; under the Trading Authorization, the Edward Jones Halifax office liquidated the accounts; the estate of the deceased was opened in Nova Scotia; and two of the charities intended to receive the rest and residue of the estate are located in Nova Scotia.

[24] The injury suffered, if a tort is proven, would have been to the deceased in Ontario during his lifetime and to his estate in Nova Scotia after his death. Currently the injury, if any, is being felt by the estate in Nova Scotia as the plaintiff asserts that he cannot properly act in his capacity as executor of the estate without knowing the assets available to the estate.

[25] After considering all the facts and weighing all of the connecting factors, I find that the law of Nova Scotia applies.

Is the original Notice of Action statute barred?

[26] There are good policy reasons why there are limitations on when an action can be brought: there comes a time when a potential defendant should be secure in his reasonable expectation that he will not be held to account for ancient obligations; the desire to foreclose claims based on stale evidence; and that plaintiffs are expected to act diligently and not "sleep on their rights" (*M.(K.) v. M.(H.)*, [1992] 3 S.C.R. 6).

[27] When the deceased died on November 29, 2011, the *Limitation of Actions Act*, R.S.N.S. 1989 c. 258, was in force, requiring the action to be commenced within six years (s. 2(1)(e)). Section 4 of the former Act provided that if a person was of unsound mind, time did not start to run until he or she became of sound mind.

[28] The evidence before me shows that there were opinions from two doctors in September 2008 that the deceased did not have the capacity to sign a Power of Attorney, and that he was no longer able to make reasonable decisions regarding his financial affairs or his personal care. The present defendant, when asked, could not point to any opinions after that time which would support the conclusion that the deceased had regained capacity. There were preparations in 2011 for a guardianship application in Ontario, alleging that the deceased was incapable of managing his own affairs. Based on the evidence provided, the deceased would fall under s. 4 of the former Act as a person of unsound mind. Therefore, at the time of the deceased's death, the limitation period had not started to run.

[29] The new *Limitation of Actions Act*, S.N.S. 2014, c. 35, came into force on September 1, 2015. It provides for a general limitation period of two years from the day on which the claim is discovered (s. 8(1)). The limitation period under the old Act had not expired on September 1, 2015, either by virtue of s. 2(1)(e) or s. 4. Two years would be August 31, 2017. The action was started on January 9, 2017. The original action is not statute barred.

Are the proposed amendments to the Notice of Action and Statement of Claim statute barred in relation to the present defendant?

[30] The motion to amend the notice of action and statement of claim was filed on January 31, 2018. If the limitation period was two years from September 1, 2015, it is statute barred. However, the plaintiff argues fraudulent concealment,

wilful concealment, and discoverability, which could extend the limitation period. The burden is on the plaintiff to establish these claims.

[31] Fraudulent concealment has been defined to include "conduct which, having regard to some special relationship between the two parties concerned, is an unconscionable thing for one to do towards the other" (*Kitchen v. Royal Air Forces Association*, [1958] 2 All E.R. 241 (C.A.), cited with approval by the majority in (*M.(K.) v. M.(H.), supra,* para. 63). Fraudulent concealment is an equitable principle aimed at preventing a limitation period from operating as an "instrument of injustice" as described in *Giroux Estate v. Trillium Health Centre,* [2005] O.J. No. 226 (Ont.C.A.):

> [28] Unlike the discoverability rule, with which Abella J.A. was concerned, the common law doctrine of fraudulent concealment is not a rule of construction. It is an equitable principle aimed at preventing a limitation period from operating "as an instrument of injustice" (see *M. (K.), supra*, at para. 66). When applicable, it will "take a case out of the effect of statute of limitation" and suspend the running of the limitation clock until such time as the injured party can reasonably discover the cause of action (see *M. (K.) supra*, at paras. 65 and 66). Its underlying rationale is grounded in the well-established principle, reiterated in *Goldin (Trustee of) v. Bennett and Co.* (2003), 65 O.R. (3d) 691 at para. 35, that equity will not permit a statute to be used as an instrument of fraud.
>
> [29] In other words, unlike the discoverability rule, the doctrine of fraudulent concealment is not dependent upon the particular wording of the limitation provision. When applied, there is no risk that the limitation provision will be construed in a manner not intended by the legislature. Fraudulent concealment is concerned with the operation of the provision, not its interpretation. Stated succinctly, it is aimed at preventing unscrupulous defendants who stand in a special relationship with the injured party from using a limitation provision as an instrument of fraud.

[32] With regard to discoverability, the *Limitation of Actions Act,* contains both a subjective and an objective test in s. 8(2), which reads:

> (2) A claim is discovered on the day on which the claimant first knew or ought reasonably to have known
>
> (a) that the injury, loss or damage had occurred;
>
> (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
>
> (c) that the act or omission was that of the defendant; and

> (d) that the injury, loss or damage is sufficiently serious to warrant a proceeding

[33] The burden of proof is on the plaintiff to show that a claim was brought within the limitation period (s. 8(1)). Section 8 is subject to s. 17:

> **Wilful concealment or wilfully misleading claimant**
>
> 17. The limitation period established by clause 8(1)(b) does not run during any time in which the defendant
>
> (a) wilfully conceals from the claimant the fact that injury, loss or damage has occurred, that it was caused by or contributed to by an act or omission or that the act or omission was of the defendant; or
>
> (b) wilfully misleads the claimant as to whether the injury, loss or damage is sufficiently serious to warrant a proceeding.

[34] The present defendant asserts that the plaintiff should have known that the money was disbursed when he received the letter from the present defendant with the attached document, which was called a financial accounting incurred for the deceased, dated June 3, 2014. If not that date, then the present defendant says that the plaintiff should have known when he received the letter from counsel, dated June 10, 2015, indicating that the deceased had dealt with investment assets while he was capable of doing so. Because the plaintiff had acted as executor of the estate of the deceased's wife, he was aware of the Edward Jones accounts in 2008.

[35] The plaintiff counters that he had no reason to suspect that there was anything amiss, and he was simply seeking an accounting from the present defendant, in an attempt to find assets which belonged to the estate. The financial accounting provided by the present defendant showed assets and expenses, but no disbursements to family. The accounting from the present defendant did not show the distribution of the funds from Edward Jones. The plaintiff's evidence is that prior to reading the present defendant's affidavit, dated March 21, 2017, and hearing his evidence in August 2017, he was unaware of any payments or gifts made for the benefit of the deceased's children. It was not until seeing and hearing the evidence in 2017 that the plaintiff would have known where the funds from Edward Jones or the real estate proceeds went.

[36] I do not agree that the plaintiff should have known that the Edward Jones funds had been dealt with by the estate. The letter from counsel was not clear

enough to give the plaintiff actual knowledge, or to lead to the conclusion that he ought reasonably to have known. The accounting document provided by the present defendant did not include the Edward Jones funds and showed revenue and expenses. The present defendant was a financial professional. I do not find that a reasonable person in these circumstances would have thought that the distribution of funds to family members was an expense. An expense is a cost to pay for something, such as expenses for the care of the deceased. An expense is not the distribution of funds to family members.

[37] The plaintiff did not have sufficient awareness of all the facts on which to base the new causes of action. Based on s. 8(2) of the *Limitation of Actions Act*, I find that the limitation period did not start to run until March 2017. Therefore, the motion to amend filed January 2018 is not statute barred

[38] If I am wrong regarding discoverability of the claim, I find that the present defendant fraudulently or wilfully concealed information from the plaintiff. He did not reveal the trading authorization. He did not reveal that the Edward Jones funds were disbursed by him, under his authority as attorney for the deceased, even when he was asked to account for those funds. He delayed and did not respond to requests for an accounting of funds. The information was not discovered until March 2017.

[39] I also find that s. 22 of the *Limitation of Actions Act* applies to the present defendant:

> **Claims added to proceedings**
>
> **22** Notwithstanding the expiry of the relevant limitation period established by this Act, a claim may be added, through a new or amended pleading, to a proceeding previously commenced if the added claim is related to the conduct, transaction or events described in the original pleadings and if the added claim
>
> > (a) is made by a party to the proceeding against another party to the proceeding and does not change the capacity in which either party sues or is sued;…

Even if the limitation period had passed to add new causes of action, I would permit them under s. 22. As Chipman, J. found at para. 55 of *Dyack v. Lincoln*, 2017 NSSC 187, when considering s. 22, the claims are related to the same conduct, transaction, or events, based on the whole factual and legal context. The present defendant will not be prejudiced or surprised by the new causes of action. The original claim and the amendments all arise from his actions while acting in a

fiduciary capacity in relation to the deceased's property. The relief sought is the same, a full and complete accounting of all the property he received and disbursed. The present defendant knew the nature of the allegations being made against him and the relief sought. The amendments sought in relation to the present defendant clearly meet the criteria in s. 22(a) of the *Limitation of Actions Act*. However, s. 22(a) cannot be used to add Ms. Hartley as a party.

Are the proposed amendments to the Notice of Action and Statement of Claim statute barred in relation to Ms. Hartley?

[40] Under Civil Procedure Rules 35.08 and 83.04 a judge may not join a party if the limitation period or extended limitation period has expired on the claim that would be advanced. The cause of action sought against Ms. Hartley relates to her receipt of funds from the present defendant when he disbursed the deceased's accounts, and the sale of other property. It is alleged that she participated in the conversion of the funds. Ms. Hartley did not file any evidence, but she was represented by counsel and submissions were provided.

[41] As found above, the applicable law is Nova Scotia law.

[42] There was no action started against Ms. Hartley during the limitation period which ended on August 31, 2017. The amendment seeking to add her as a party and to claim against her was not filed until January 2018.

[43] The plaintiff alleges that the wilful or fraudulent concealment on the part of the present defendant meant that the plaintiff was unaware of the involvement of Mr. Hartley in the events and transactions upon which the claim is based.

[44] There are allegations made against Ms. Hartley, but the present defendant testified that she had no dealings, and no knowledge of his dealings, with the deceased's assets except for the funds that were disbursed to her. Section 22(b) of the *Limitation of Actions Act,* allows the addition of a party after the limitation period has expired:

> **22** Notwithstanding the expiry of the relevant limitation period established by this Act, a claim may be added, through a new or amended pleading, to a proceeding previously commenced if the added claim is related to the conduct, transaction or events described in the original pleadings and if the added claim
>
> > (b) adds or substitutes a defendant or changes the capacity in which a defendant is sued, but the defendant has received, before or within the limitation

> period applicable to the added claim plus the time provided by law for the service of process, sufficient knowledge of the added claim that the defendant will not be prejudiced in defending against the added claim on the merits; or…

However, there is no evidence that Ms. Hartley was aware of the original action or the added claim within the limitation period. I cannot find that she had sufficient knowledge of the added claim so that she would not be prejudiced in defending on the merits.

[45] The plaintiff submits that Ms. Hartley cannot claim prejudice when she has not provided any evidence. She can, however, rely on the evidence presented that she had no involvement in the disbursement of funds except to receive some of the funds.

[46] Counsel for Ms. Hartley points out that there has already been a motion before the court regarding jurisdiction that affects her but that she did not participate in, as she was not a party. This is a prejudice to Ms. Hartley.

[47] In relation to Ms. Hartley, I do find that the amendment sought to add her as a party and to make a claim against her are statute barred. Many years have passed since the deceased lived with her in Ontario and since the deceased died.

Should the plaintiff's proposed amendments be allowed?

[48] The plaintiff is out of time to amend the notice of action without the permission of the court. Civil Procedure Rule 83 provides the court with the discretion to allow the amendment of a notice of action and statement of claim at any time. The amendment will be granted unless the defendant shows that the applicant is acting in bad faith, or that the other party will suffer prejudice that cannot be compensated in costs (*Canada Life Assurance Company v. Saywood*, 2010 NSSC 87).

[49] There is no allegation of bad faith. I am not satisfied, on the evidence, that the present defendant is prejudiced by the amendments alleging new causes of action. As stated above, the amendments are related to the same conduct, transaction, or events as in the original claim. The other amendments sought simply better describe the allegations against the defendant. Rule 83.11 allows a judge to permit an amendment to a cause of action after the expiry of the limitation period if the judge is satisfied both that the material facts supporting the cause are pleaded and the amendment merely identifies, or better describes, the cause. Based

on my findings above, I would have allowed the amendments sought under Rule 83.11.

[50] Rule 83.11 does not allow the adding of parties that cannot be added after the expiration of a limitation period.

[51] I will allow the amendments sought by the plaintiff in relation to the present defendant. The amendments sought in relation to Ms. Hartley are not allowed.

Conclusion

[52] The law governing the validity of the Continuing Power of Attorney is the law of Ontario under the *Substitute Decisions Act.*

[53] The law otherwise governing the proceeding is the law of Nova Scotia.

[54] The original action is not statute barred.

[55] The proposed amendments in relation to the present defendant are not statute barred.

[56] The proposed amendments in relation to Ms. Hartley are statute barred.

[57] The plaintiff's amendments in relation to the present defendant are allowed. The plaintiff's amendments in relation to Ms. Hartley are not allowed.

[58] If the parties wish to be heard in relation to costs, they should contact the Prothonotary.

Lynch, J.