SUPREME COURT OF NOVA SCOTIA

Citation: *River John Oceanfront Resort Ltd. v. Bureau*, 2019 NSSC 153

Date: 20190325
Docket: Hfx No. 454003
Registry: Halifax

Between:

River John Oceanfront Resort Ltd., Alexander Gillis,
Roberta Morrison and Gerald Morrison

Plaintiffs

v.

Richard Bureau and Richard A. Bureau Barrister & Solicitor Incorporated

Defendants

DECISION

Judge:	The Honourable Justice Darlene Jamieson
Heard:	March 25, 2019 in Halifax, Nova Scotia
Oral Decision:	March 25, 2019
Written Decision:	May 9, 2019
Counsel:	James Fawson, for the Plaintiffs (self-represented) Stephen Kingston, for the Defendants

By the Court:
Introduction:

[1] This is a motion for summary judgment on the evidence pursuant to Civil Procedure Rule 13.04 brought by Richard Bureau and Richard A. Bureau Barrister and Solicitor Inc. (the Defendants) in relation to the claims brought by River John Oceanfront Resort Limited (RJOR), Alexander Gillis, Roberta Morrison and Gerald Morrison (collectively the Plaintiffs).

[2] The Plaintiffs commenced this action on July 27, 2016 and filed an Amended Notice of Action on March 6, 2017. The Defendants filed their Notice of Defence on April 6, 2017.

[3] The action brought by the Plaintiffs against the Defendants is stated to arise from the Plaintiffs' retainer and employment of the Defendants who were to provide legal services incidental to the development of RJOR's lands. The Amended Statement of Claim states at paragraphs 7, 8 and 9 as follows:

> 7. In or about 2002, the Plaintiffs agreed to retain and employ the Defendants for reward to provide legal services incidental to the development of RJOR's lands ('the Project") and the Defendants accepted such retainer and employment.
> 8. It was a term of the aforesaid agreement, that the Defendants would exercise all reasonable care, skill, diligence and competence in the performance of the aforesaid legal services; and, in the alternative, it was a duty of the Defendants to do so.
> 9. Between 2002 and 2005, in pursuance of the said retainer and employment, the Defendants purported to provide legal services to certain of the Plaintiffs' in respect of mortgages and various parcels of land involved in the Project, but, by reason of fraud and the negligence, breach of duty and breach of agreement and the terms thereof of or by the Defendants, their servants or agents, in performing such services, the Plaintiffs have suffered, and continue to suffer, losses and damages.

[4] The Defendants say there is no genuine issue of material fact requiring a trial because the Plaintiffs' claims are barred, having been commenced well after the applicable limitation periods. The Defendants state the applicable limitation periods for claims in negligence, fraud, breach of contract and breach of duty are

governed by the provisions of the ***Limitation of Actions Act***, SNS 2014, c.35 which states at s. 23(3):

> Where a claim was discovered before the effective date, the claim may not be brought after the earlier of
>
> (a) two years from the effective date; and
>
> (b) the day on which the former limitation period expired or would have expired.

[5] The Defendants submit the Plaintiffs' claims were discoverable before the effective date of September 1, 2015. They further say the earlier date pursuant to s. 23(3) is the date on which the former limitation period expired under the prior limitations legislation (formerly called ***The Limitation of Actions Act***, RSNS 1989, c. 258 and what is now the ***Real Property Limitations Act***, RSNS 1989, C258.) The Defendants say the applicable limitation period for the Plaintiffs' claims under the former Act was six years from the date of discoverability of each cause of action according to s. 2. The Defendants say all of the claims were discovered or discoverable prior to July 28, 2010, being six years prior to July 27, 2016, the date the action was commenced.

[6] The Defendants submit all of the claims brought by the Plaintiffs in the Statement of Claim are statute-barred and seek an Order for summary judgment.

[7] The Plaintiffs, Mr. Gillis and the Morrisons are self-represented. The corporate Plaintiff RJOR is self-represented by its agent, Mr. James Fawson. By Order of Justice Wright dated July 16, 2018, Mr. Fawson was permitted to assist Mr. Gillis and the Morrisons and, if necessary, speak on their behalves. Mr. Morrison attended the motion in person. Ms. Morrison and Mr. Gillis attended by telephone.

[8] The Plaintiffs' submissions outline multiple arguments under the former and current provisions of the *Limitation of Actions Act* as well as the *Real Property Limitations Act*, whereby they say there are various applicable limitation periods governing their claims which have not expired. Set out below are the Plaintiffs' positions regarding applicable limitation periods.

[9] The Plaintiffs state their claims are not statute barred. They say the ***Real Property Limitations Act***, RSNS 1989, c. 258 is applicable to their claims because the transactions involve land transfers, mortgages and charges on land. They specifically say that sections 23 and 24 are applicable and the referenced 20 years

in each section is the timeframe within which the Plaintiffs could bring an action. They say the first inappropriate action by the Defendants occurred in December 2003 and, therefore, the time limitation would expire on December 2023.

[10] The Plaintiffs further state that s. 29 of the ***Real Property Limitations Act*** addresses issues involving fraud and that the 20 years does not commence until the Plaintiffs became aware of the fraud. They say they became aware of fraud in December 2006 and, therefore, the corresponding time limitation would expire in December 2026.

[11] The Plaintiffs also reference the current ***Limitation of Actions Act*** and say s. 8 includes provisions relating to a series of acts or omissions, which they say is the case here. They say the date upon which the last act or omission of the Defendants took place is the commencement of the time limitation. They also say that, where there is evidence of wilful concealment, the time limitation does not start until the claimant either becomes aware of the fraud or at least should have become aware of the fraud. They say that with respect to the fraudulent actions which culminated in May 2, 2006, the Plaintiffs' response was to lodge an official complaint with the Nova Scotia Barristers' Society (NSBS) in December 2006 against the Defendants. They argue this action by the plaintiff group, of making an official complaint to the NSBS, brought them well within the applicable time limitation.

[12] The Plaintiffs further say the act of the Defendants forwarding files to the NSBS and engaging an independent lawyer are two actions indicating acknowledgement of potential liability which, they claim under section 20, resets the limitation period.

[13] The Plaintiffs also state, with respect to s. 23, that they commenced their action on July 27, 2016 which they submit is well within the two-year limitation after the effective date of September 1, 2015.

[14] The Plaintiffs also set out their position with respect to the former ***Limitation of Actions Act*** and say the Plaintiff group is not out of time. They say there are certain sections of the former Act that should be noted, including s. 3, and that the Court can disallow a defence based upon time limitation and allow the action to proceed if it appears to the Court to be equitable. The Plaintiffs set out the factors the Court is to consider under s. 3 and claim they are not out of time under the former Act.

[15] The majority of the Plaintiffs' submissions were focused on the merits of their claims. My role is not to weigh evidence and determine whether, on the merits of the various claims, the Plaintiffs should succeed or fail. My role is to determine, based on the *Civil Procedure Rules*, legislation, case law, Affidavits, briefs and oral submissions whether the motion for summary judgment brought by the Defendants (whereby they allege the limitation periods for bringing the Plaintiffs' claims have expired) should or should not be granted.

Evidence on the Motion:

[16] In support of the summary judgment motion, the Defendants filed the Affidavit of Richard Bureau.

[17] In response to the summary judgment motion, the Plaintiffs filed an Affidavit of Lynda Fawson, an investor and shareholder of River John Oceanfront Resort Ltd. (RJOR), an Affidavit of Gerald Morrison, an investor of RJOR, an Affidavit of Alexander Gillis an investor of RJOR and an Affidavit of Michael Dudka a shareholder and past President of RJOR.

[18] There was no cross-examination on the Affidavits.

Background:

[19] RJOR was the owner of various parcels of land located at Waldegrave in Colchester County, Nova Scotia. RJOR is described as a Community Economic Development Investment Fund Project initiated in 2001. The Plaintiffs, Alexander Gillis, Gerald Morrison and Roberta Morrison are described as creditors of RJOR.

[20] Mr. Bureau was retained by RJOR in or about 2001 in relation to various property transactions.

[21] The RJOR project commenced with the purchase of two adjacent properties in 2002 which were referred to as Maggie's farm and Bernie's campground. Maggie's farm property was financed with a vendor take-back mortgage to be paid out in approximately one year. Payout of this mortgage required additional financing in the form of two investor mortgages by Alexander Gillis in the amounts of $68,250 and $148,500 (Affidavit of M. Dudka, para. 8). There was also an investor mortgage by Anna St. Clair in the amount of $68,250. These mortgages were registered in the Colchester County Land Registration Office (the Registry)

on September 12, 2003 (Affidavit of M. Dudka, para. 8; Affidavit of R. Bureau, paras. 8 and 18).

[22] Mr. Bureau, in his Affidavit, indicates the two Gillis mortgages were dated August 8, 2003 ($68,250) and August 20, 2003($148,500). The mortgages were registered against PID Nos. 20025664 and 20428116. The St. Clair mortgage was dated August 2003 and registered against PID Nos. 20025664 and 20428116 (Affidavit of R. Bureau, paras. 6-9 and 18).

[23] In February of 2004 Madonna MacDonald granted a mortgage to Ms. St. Clair which secured a debt of $88,000 and was recorded at the Registry against PID 20025664 on March 3, 2004 (Affidavit of R. Bureau, paras. 19 and 20).

[24] Mr. Bureau states in his Affidavit that he represented RJOR and Mr. Gillis in connection with the execution and registration of the aforementioned Gillis mortgages. He further states he had represented Mr. Gillis on a number of prior and unrelated transactions.

[25] By October of 2003 four chalet cottages had been almost completely built on the Bernie's Campground property and a fifth chalet cottage was under construction on the Maggie's Farm property (Affidavit of M. Dudka, para. 9).

[26] RJOR planned to obtain financing from CIBC in the amount of $400,000 but this amount was reduced to $200,000 by CIBC due to the lands at issue not having been subdivided. This meant the three investor mortgages could not be paid out until the land was subdivided. The Plaintiffs allege they then instructed the Defendants on October 28, 2003:

> . . . to pay out the Alexander Gillis $68,250 mortgage, which was in first position, and subordinate the Alexander Gillis $148,500 mortgage, which was in second position, as well as the Anna St. Clair $68,250 mortgage, which was in third position, to the new First National $128,520 mortgage being placed on the north section of Maggie's farm land on December 5, 2003.
>
> (Affidavit of M. Dudka, para. 12)

[27] Mr. Dudka, at para. 13 of his Affidavit indicates the Defendants, on December 5, 2003, paid out the 2003 mortgage of Ms. St. Clair in the amount of $68,250 but did not issue or register a release. He further says the Defendants released the Alexander Gillis mortgages of $68,250 and $148,500, without either having been paid out.

[28] The Plaintiffs claim that on October 7, 2004, unbeknownst to them, the Defendants released without payout the 2004 mortgage of Ms. St. Clair in the amount of $88,000. They allege this release was undertaken using a fraudulently-modified release document generated from the TD Waterhouse original release document for the 2003 St. Clair mortgage in the amount of $68,250 which had been paid out on December 5, 2003 but not released (Affidavit of M. Dudka, para. 15).

[29] Mr. Bureau indicates in his Affidavit that the 2003 St. Clair mortgage was paid out by River John and he drafted a release for execution by Toronto Dominion Bank, as agent for Ms. St. Clair, which was executed by Toronto Dominion Bank on or about March 20, 2004. Mr. Bureau states at para. 23 of his Affidavit:

> Due to an incorrect action by a staff member in my office, the 2003 St. Clair mortgage release that was actually recorded referenced the 2004 St. Clair mortgage rather than the 2003 St. Clair mortgage. This change was not made on my instructions and, indeed, I only became aware of it in or about March 2006.

[30] Mr. Bureau states at paragraphs 25 and 26 of his Affidavit that upon learning of the error he caused a series of Form 49s to be recorded at the Registry in April and May of 2006 which had the effect of releasing the 2003 St. Clair mortgage and reviving the 2004 St. Clair mortgage. The parties are in agreement that the last action of the Defendants in relation to the lands of the Plaintiffs was the filing of the four Form 49s.

[31] The Plaintiffs allege the Defendants, unbeknownst to them, registered the series of four Form 49 registrations (Affidavit of M. Dudka, para. 19).

[32] On December 1, 2006, RJOR, Madonna McDonald, Michael Dudka, Jim Fawson and Lynda Fawson complained to the NSBS concerning Mr. Bureau's representation of their interests. At this time the above individuals and RJOR indicated they were represented by legal counsel (Affidavit of M. Dudka, para. 22 and Exhibit 20).

[33] Ms. Fawson's Affidavit indicates that Lot 5 (containing a chalet cottage) and Lot 29 (containing a Cape Cod house) were both foreclosed and sold in January and March of 2007 (Affidavit of L. Fawson, para. 8).

Alexander Gillis

[34] The Plaintiff, Mr. Gillis, states in his Affidavit that in October 2003 the RJOR project had arranged for a $400,000 long-term mortgage with CIBC on the Bernie's Campground part of the land. The intention was for these funds to pay out the three investor mortgages (his two mortgages and the third being the Anna St. Clair mortgage of $68,250). Mr. Gillis indicates that, as he was planning to travel overseas for an extended period, the Defendants were requested by RJOR to prepare a Release for both of Mr. Gillis's mortgages. Mr. Gillis indicates that on his return in March 2004 it became clear to him that his two mortgages were released without payout. The St. Clair mortgage had been paid out but not released and he became aware that there was something seriously wrong with the way the mortgage transactions had been handled. Mr. Gillis believed the people at RJOR were responsible (Affidavit of A. Gillis, paras. 10 and 11).

[35] Mr. Bureau says that in late October 2003 he was requested by Mr. Dudka to prepare a draft form of Release with regard to the Gillis mortgages. He did so. Mr. Dudka witnessed Mr. Gillis's signature. Mr. Bureau swore the Affidavit of the subscribing witness, Mr. Dudka. Mr. Dudka instructed him to record the Gillis Releases which he did. Mr. Bureau states he did not represent Mr. Gillis in connection with the Release and was not involved in any discussions or negotiations between Mr. Dudka and Mr. Gillis (Affidavit of R. Bureau, paras. 12-16).

[36] Shortly after March 2004, Mr. Gillis sought legal advice. In February 2005 an Order of the Supreme Court of Nova Scotia granted Mr. Gillis an interim injunction restraining M. Dudka, RJOR, James Fawson, Linda Fawson, Anna St. Clair, David Neville and Madonna MacDonald from conveying or encumbering the real property in issue (PID 20428116, 20025664, 20379608, 20224580, 20224598, 20307674.) Also, on February 16, 2005 a Stop Order was issued under the ***Land Registration Act*** and filed at the Colchester County Land Registration Office in relation to the same PIDs (Affidavit of A. Gillis, para. 13 and Exhibits six and seven).

[37] Mr. Gillis commenced legal action against the same individuals and RJOR who were the subjects of the interim injunction on February 1, 2005. The action specifically relates to the two Gillis mortgages mentioned above.

[38] On February 24, 2006 Mr. Gillis received a legal opinion from Mr. Tim Hill, Q.C., regarding a potential claim against Mr. Bureau which states: "You seek advice as to whether or not any liability might rest with Bureau for your losses on those loans." Later, on November 10, 2006, Mr. Gillis further requested a legal opinion from Fraser MacFadyen concerning the Defendants. That correspondence states: "Given the initial response by Mr. Bureau's counsel it would appear that at this point there remains nothing further to do other than to decide whether or not to commence proceedings against Mr. Bureau…".

[39] Mr. Gillis states in his Affidavit: "It was these opinions by trained legal people that made me realize that the people at the RJOR project were not responsible for the release without payout of my mortgages. It was, in fact, the Defendant who is responsible for the inappropriate release without payout."

Gerald and Roberta Morrison

[40] The Plaintiffs, Gerald and Roberta Morrison were approached in late 2005 by RJOR to provide some short-term financing. From the beginning they were dubious about becoming involved. Mr. Morrison's Affidavit states at paras. 5 and 6:

> 5 . . . it was explained to us that there had been some turmoil with the project due to the Defendants having released two mortgages by Alexander Gillis without payout and a lengthy delay at Taron Equipment Limited, the Kennedy Lake Road builder and lot subdivision surveyor, due to some undefined internal problems at that company. The Release without payout forced Alexander Gillis to register Stop Work Orders against the project. The delay in lot subdivision caused the CIBC bank to reduce the amount which it would disburse on the mortgage on Bernie's campground lands. It was explained that these two actions had severely restricted the RJOR projects capacity to move forward. We did not become aware until February 2017 that the Taron Equipment Limited work had been formally completed back in 2005 but due to the Alexander Gillis Stop Work Orders, the RJOR project was unable to pay for that work. This nonpayment resulted in a mechanic's lien being registered against the RJOR Project.
>
> 6 Both myself and my wife were dubious at first about providing financing to project that appeared to have an excessive amount of financial turmoil. However, it was explained to us that if we provided financing to pay the Taron Equipment debt, then the project could move forward. . .

[41] On January 6, 2006 the Morrisons granted a promissory note/mortgage to RJOR in the amount of $36,000 (less $175 fee) from their Registered Retirement Savings Plans. In addition to the promissory note, RJOR granted them a mortgage charge against new lots 15 (PID 20437414),16 (PID 20437422) and 17 (PID 20437430).

[42] The Morrisons eventually took steps to sell these lots and on June 29, 2007 a Quit Claim Deed was prepared for issuing to Robin Roy Williams. At this same time the Morrisons learned the Defendants had registered the four Form 49 changes on April 6, 12, 26 and May 2, 2006 respectively to reinstate the St. Clair $88,000 mortgage. The Morrisons state these changes effectively placed a second charge against lots 15, 16, and 17. Mr. Morrison's Affidavit indicates they had lawyers involved at the time who learned Ms. St. Clair desired full payment prior to releasing her second charge on these lots. The sale to Mr. Williams was not completed (paras. 9 and 10 of the Affidavit of G. Morrison).

[43] The Morrisons filed a complaint with the NSBS concerning Mr. Bureau on May 18, 2016. In response to the question concerning what the lawyer was requested to do, the answer was: "Nothing. He upon his own actions starting April 2006 put (registered) three Form 49s with the Colchester County Registry…".

[44] Mr. Bureau says he was neither retained by, nor represented the Morrisons in connection with this or any other matter. He further indicates he did not represent RJOR with regard to its dealings with the Morrisons.

Issues

[45] The following question must be determined by this Court:

1. Should summary judgment be granted, and the Plaintiffs' claims against the Defendants be dismissed, because the applicable limitation periods expired before the Plaintiffs' action was commenced?

Within this question are several other questions:

(a) What is the source and the length of the limitation periods applicable to the Plaintiffs' claims?

(b) When were the facts that may give rise to the causes of action discoverable by the Plaintiffs?

(c) Is s. 3 of the former *Limitation of Actions Act* available to disallow a limitation period defence, thereby extending the limitation period?

Analysis

The Applicable Law:

[46] There is no discretion under Civil Procedure Rule 13.04 where a judge is satisfied that there is no genuine issue of material fact, and where the claim or defence does not require determination of a question of law. The Rule states a judge must grant summary judgment.

[47] Civil Procedure Rule 13.04 states:

> 13.04(1) A judge who is satisfied on both of the following must grant summary judgment on a claim or a defence in an action:
>
> > (a) there is no genuine issue of material fact, whether on its own or mixed with a question of law, for trial of the claim or defence;
> >
> > (b) the claim or defence does not require determination of a question of law, whether on its own or mixed with a question of fact, or the claim or defence requires determination only of a question of law and the judge exercises the discretion provided in this Rule 13.04 to determine the question.
>
> 13.04(2) When the absence of a genuine issue of material fact for trial and the absence of a question of law requiring determination are established, summary judgment must be granted without distinction between a claim and a defence and without further inquiry into chances of success.
>
> 13.04(3) The judge may grant judgment, dismiss the proceeding, allow a claim, dismiss a claim, or dismiss a defence.
>
> 13.04(4) On a motion for summary judgment on evidence, the pleadings serve only to indicate the issues, and the subjects of a genuine issue of material fact and a question of law depend on the evidence presented.
>
> 13.04(5) A party who wishes to contest the motion must provide evidence in favour of the party's claim or defence by Affidavit filed by the contesting party, Affidavit filed by another party, cross-examination, or other means permitted by a judge.
>
> 13.04(6) A judge who hears a motion for summary judgment on evidence has discretion to do either of the following:

> (a) determine a question of law, if there is no genuine issue of material fact for trial;
>
> (b) adjourn the hearing of the motion for any just purpose including to permit necessary disclosure, production, discovery, presentation of expert evidence, or collection of other evidence.

[48] In ***Burton Canada Co. v. Coady***, 2013 NSCA 95 (N.S.C.A.) the Court commented on the purpose of summary judgment (para. 22) :

> 22 In my respectful opinion this process has become needlessly complicated and cumbersome. Summary judgment should be just that. Summary. "Summary" is intended to mean quick and effective and less costly and time consuming than a trial. The purpose of summary judgment is to put an end to claims or defences that have no real prospect of success. Such cases are seen by an experienced judge as being doomed to fail. These matters are weeded out to free the system for other cases that deserve to be heard on their merits. That is the objective. Lawyers and judges should apply the Rules to ensure that such an outcome is achieved.

[49] Further at para. 87(8), the Court defined "material fact" as a fact that is essential to the claim or defence and "genuine issue" as an issue that arises from or is relevant to the allegations associated with the cause of action, or the defences pleaded.

[50] The analytical framework to be applied on motions for summary judgment on the evidence pursuant to Rule 13.04 was set out in ***Shannex Inc. v. Dora Construction Ltd.***, 2016 NSCA 89, where Fichaud J.A. stated:

> [34] I interpret the amended Rule 13.04 to pose five sequential questions:
>
> First Question: Does the challenged pleading disclose a "genuine issue of material fact", either pure or mixed with a question of law? [Rules 13.04(1), (2) and (4)]
>
> If Yes, it should not be determined by summary judgment. It should either be considered for conversion to an application under Rules 13.08(1)(b) and 6 as discussed below [paras. 37-42] or go to trial.
>
> The analysis of this question follows Burton's first step.
>
> . . .
>
> Second Question: If the answer to #1 is No, then: Does the challenged pleading require the determination of a question of law, either pure, or mixed with a question of fact?

If the answers to #1 and #2 are both No, summary judgment "must" issue: Rules 13.04(1) and (2). This would be a nuisance claim with no genuine issue of any kind — whether material fact, law, or mixed fact and law.

Third Question: If the answers to #1 and #2 are No and Yes respectively, leaving only an issue of law, then the judge "may" grant or deny summary judgment: Rule 13.04(3). Governing that discretion is the principle in Burton's second test:" Does the challenged pleading have a real chance of success?"

Nothing in the amended Rule 13.04 changes Burton's test. It is difficult to envisage any other principled standard for a summary judgment. To dismiss summarily, without a full merits analysis, a claim or defence that has a real chance of success at a later trial or application hearing, would be a patently unjust exercise of discretion.

It is for the responding party to show a real chance of success. If the answer is no, then summary judgment issues to dismiss the ill-fated pleading.

Fourth Question: If the answer to #3 is yes, leaving only an issue of law with a real chance of success, then, under Rule 13.04(6)(a): Should the judge exercise the "discretion" to finally determine the issue of law?

If the judge does not exercise this discretion, then: (1) the judge dismisses the motion for summary judgment, and (2) the matter with a "real chance of success" goes onward either to a converted application under Rules 13.08(1)(b) and 6, as discussed below [paras. 37-42] or to trial. If the judge exercises the discretion, he or she determines the full merits of the legal issue once and for all. Then the judge's conclusion generates issue estoppel, subject to any appeal.

. . .

[36] 'Best foot forward': Under the amended Rule, as with the former Rule, the judge's assessment of issues of fact or mixed fact and law depends on evidence, not just pleaded allegations or speculation from the counsel table. Each party is expected to 'put his best foot forward' with evidence and legal submissions on all these questions, including the 'genuine issue of material fact', issue of law, and 'real chance of success': Rules 13.04(4) and (5); Burton, para. 87.

. . .

[42] Rule 13.08(1) says that a judge who dismisses the motion for summary judgment "must" schedule a hearing to consider conversion or directions. Accordingly, a dismissed motion under Rule 13.04 triggers the supplementary question:

Fifth Question: If the motion under Rule 13.04 is dismissed, should the action be converted to an application and, if not, what directions should govern the conduct of the action?

[51] In the context of a Defendant's motion for summary judgment based on an expired limitation period, the Nova Scotia Court of Appeal, in ***Milbury v. Nova Scotia (Attorney General)***, 2007 NSCA 52, stated as follows at paras. 20 and 23:

> [20] Did the Defendants establish that there are no genuine issues of fact on the question of whether the Plaintiffs' action is statute barred because the limitation period has expired?
>
> . . .
>
> [23] When the Defendant pleads a limitation period and proves the facts supporting the expiry of the time period, the plaintiff has the burden of proving that the time has not expired as a result, for example, of the discoverability rule. [citations omitted]

[52] The above is consistent with the first question to be answered in the ***Shannex*** analysis: Is there a "genuine issue of material fact, either pure or mixed with a question of law?"

Should Summary Judgment be granted and the Plaintiffs claims against the Defendants be dismissed because the applicable limitation periods expired before the action was commenced?

Is there a "genuine issue of material fact, either pure or mixed, with a question of law?"

[53] The issue for the Court to resolve is whether, pursuant to Civil Procedure Rule 13.04, the Defendants have met the burden of showing there is no genuine issue of material fact, whether on its own or mixed with questions of law, for trial and that the claim does not require the determination of a question of law. The Rule is clear I must grant summary judgment in the absence of a genuine issue of material fact for trial and when there is an absence of a question of law, either on its own or mixed with fact, requiring determination.

[54] The Defendants have the onus to show by evidence there is no genuine issue of material fact. As Fichaud, J.A. stated in *Shannex*: "Each party is expected to 'put his best foot forward' with evidence and legal submissions on all these questions, including the 'genuine issue of material fact' . . .".

[55] The Plaintiffs are also required to "put their best foot forward". In responding to this motion, the Plaintiffs are required to adduce evidence as to why the limitation period has not expired.

What is the Applicable Limitation Period?

[56] The Plaintiffs' alleged claims, as set out in the Statement of Claim, arise out of legal work done by Mr. Bureau for RJOR. The Plaintiffs allege claims in negligence, fraud, breach of contract and breach of duty against the Defendants. The claims of the individual Plaintiffs are also stated to arise from the same legal work done in relation to the properties of RJOR.

[57] The Plaintiffs claim that the ***Real Property Limitations Act***, RSNS 1989, c. 258, applies to their claims because they say, "this Act relates directly to transactions involving land transfers, mortgages and charges on land which specifically are the matters of Hfx. No. 454003". The Plaintiffs point to sections 23, 24 and 29 of the ***Real Property Limitations Act***. Sections 23 and 24 state:

> s. 23 No action or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgement, or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within 20 years next after a present right to receive the same has accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money, or some interest thereon, has been paid, or some acknowledgement of the right thereto has been given in writing, signed by the person by whom the same is payable, or his agent, to the person entitled thereto, or his agent and in such case no such action or proceeding shall be brought but within 20 years after such payment or acknowledgement, or the last of such payments or acknowledgements, if more than one was made or given.
>
> s. 24 (1) Any person entitled to or claiming under a mortgage of land, may make an entry, or bring an action to recover such land at any time within 20 years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than 20 years have elapsed since the time at which the right to make such entry or bring such action first accrued …

[58] The ***Real Property Limitations Act*** deals with limitation periods for claims respecting real property. The Plaintiffs' claims are in negligence, fraud, breach of contract and breach of duty and, therefore, any limitation periods set out in that Act are not applicable. In addition, the Plaintiffs claim monetary damages arising from

their claims of negligence, etc. seeking a lump sum of $3,590,558.63 plus prejudgment interest.

[59] The ***Limitation of Actions Act***, SNS 2014, c. 35 (hereinafter referred to as "the Act") is the legislation currently in place. The Act specifically states:

> 3. Subject to section 4, this act applies to a claim pursued in a court proceeding, other than a claim
>
> (a) to which the Real Property Limitations Act applies; or
>
> (b) in a proceeding for judicial review.

[60] The claims brought by the Plaintiffs are neither those to which the ***Real Property Limitations Act*** applies nor is this a proceeding for judicial review. The current *Limitations of Actions Act* applies.

[61] Section 23 of the Act states:

> 23 (1) In this section,
>
> (a) "effective date" means the day on which this Act comes into force;
>
> (b) 'former limitation period' means, in respect of a claim, the limitation period that applied to the claim before the effective date.
>
> (2) Subsection (3) applies to claims that are based on acts or omissions that took place before the effective date, other than claims referred to in section 11, and in respect of which no proceeding has been commenced before the effective date.
>
> (3) Where a claim was discovered before the effective date, the claim may not be brought after the earlier of
>
> (a) two years from the effective date; and
>
> (b) the day on which the former limitation period expired or would have expired.

[62] First of all, it is clear the alleged acts or omissions took place before the effective date of September 1, 2015, and no proceeding was commenced before the effective date. The alleged acts or omissions center around events concerning the release of the two Gillis mortgages which were recorded on December 5, 2003 and March 4, 2004 and release of the 2004 St. Clair mortgage of $88,000 which was recorded at the Registry on October 7, 2004. The Plaintiffs also take issue with the four Form 49s registered in April and May of 2006 to correct the error concerning release of the 2004 St. Clair mortgage rather than the 2003 St. Clair mortgage. All of the alleged events took place well before the effective date. The action was

commenced on July 27, 2016. Therefore s. 23(2) directs that s. 23(3) of the Act applies.

[63] Section 23(3) then raises the question of whether the claims were discovered before the effective date of September 1, 2015. The Defendants state the undisputed evidence demonstrates the Plaintiffs' claims were discoverable before the effective date of September 1, 2015. If so, the Plaintiffs' limitation period expired on the earlier of September 1, 2017 (being two years from the effective date) and the date on which the "former limitation period" expired.

[64] The "former limitation period" means the limitation period for the claims under the prior version of the limitations legislation which is now in force as the ***Real Property Limitations Act***. Prior to its repeal, s. 2 of the former Act set out the limitation period in relation to the Plaintiffs' claims as being six years (s 2(e)). Before addressing discoverability I will consider the Plaintiffs' claim regarding ss. 20 and 8(3) of the Act.

[65] The Plaintiffs allege the Defendants acknowledged potential liability and point to s. 20 of the Act which states:

> 20(1) Where, before the expiry of the relevant limitation period established by this act, a person acknowledges liability in respect of a claim for
>
> (a) payment of a liquidated sum;
>
> (b) the recovery of personal property;
>
> (c) the enforcement of a charge on personal property or
>
> (d) relief from enforcement of a charge on personal property,
>
> the limitation period begins again at the time of the acknowledgement.

[66] The claims advanced here are not:

> . . . A claim for payment of a liquidated sum; . . . A claim for recovery of personal property. . . A claim for the enforcement of a charge on personal property . . . A claim for relief from enforcement of a charge on personal property.

[67] The Plaintiffs claim:

> It was in November of 2006 that the Defendants identified Catherine Walker as their lawyer to which all correspondence should be directed. Forwarding files to the Barristers Society and engaging an independent lawyer are two actions indicating acknowledgement of a potential liability. The time limitation period is reset to start upon any acknowledgement of a potential liability as per section 20

> of this act. The action by the plaintiff group of making a claim against the Defendants by issuing an official complaint to the Barristers Society is well within any aspect of time limitation.

[68] The specifics of the claims being advanced by the Plaintiffs do not fit within the provisions of s. 20. The above-referenced actions do not equate to the Defendants having acknowledged liability. Even if the Plaintiffs were accurate, the limitation period would reset at November 2006 and would have expired six years later by November 2012.

[69] Further, contrary to the Plaintiffs' submissions, initiating a complaint with the NSBS against Mr. Bureau is not equivalent to starting a legal action in this court and does not stop the limitation period from running.

[70] The Plaintiffs also rely on s. 8(3) of the Act. The parties are in agreement the last action of the Defendants in relation to the land was the filing of four Form 49s in April and May of 2006. Therefore, any alleged acts or omissions of the Defendants ceased in May 2006. Section 8(3) of the Act dealing with "a continuous act or omission" does not assist the Plaintiffs.

Discoverability

[71] The error alleged by the Plaintiffs and acknowledged by Mr. Bureau occurred when an incorrect Release of Mortgage was filed releasing the 2004 St. Clair mortgage rather than the 2003 St. Clair mortgage. The Release was recorded at the Registry on October 7, 2004 as document number 76427591. The action was commenced almost 12 years after this error. The Gillis Releases of Mortgage, which are part of the allegations, were filed on December 5, 2003 and March 9, 2004. The action against the Defendants was commenced more than 12 years later. The four Form 49s were recorded in April and May of 2006. The Plaintiffs allege the fraud actions culminated in April and May of 2006 when the four Form 49s were filed. The action was commenced ten years later. The question is when were the alleged claims discoverable by the Plaintiffs?

[72] The Act at s. 8(2) addresses discoverability. It states:

> 8(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.

[73] Prior to the Act incorporating s. 8(2) the common law principle of discoverability was well settled. The discoverability principle, as set out by LeDain, J. in ***Central & Eastern Trust v. Rafuse***, 1986 CarswellNS 40 (SCC), was referenced in ***Barry v. Halifax Regional Municipality***, 2017 NSSC 180.

> A cause of action arises for purposes of a limitation period when the material facts on which it is based have been discovered or ought to have been discovered by the plaintiff by the exercise of reasonable diligence.

[74] I will address the issue of discoverability first for the corporate entity RJOR and then the individual Plaintiffs being Alexander Gillis and Gerald and Roberta Morrison. I will first set out the parties' positions on discoverability.

The Parties' Positions on Discoverability:

RJOR

[75] The Defendants say the date of discoverability for RJOR was when Mr. Gillis brought his action against the company on February 1, 2005. The Defendants further state that in December of 2006 RJOR filed a professional complaint with the NSBS against Mr. Bureau with regard to his role in the various property transactions involving the company. They note that RJOR was aware of the Form 49s filed in the Registry as they were the basis for the complaint to the NSBS.

Alexander Gillis

[76] The Defendants say the evidence indicates that in 2004 Mr. Gillis was aware the Gillis mortgage Releases had been recorded but that he had not been paid. They further point to the action he brought against RJOR et al. on February 1, 2005 in relation to the Releases. Finally they reference Mr. Gillis seeking legal opinions on two occasions between 2005 and 2006 regarding commencing litigation against the Defendants.

Gerald and Roberta Morrison

[77] The Defendants say that in 2007 (after the St. Clair mortgage release and Mr. Bureau's Form 49s had been recorded) the Morrisons made arrangements to convey the Morrison properties under power of attorney provided by RJOR. They indicate that, although the sale did not conclude, the Morrisons executed a Deed on June 29, 2007 and, at that time, an exercise of reasonable diligence would have revealed the existence of the Form 49s.

[78] The Defendants assert that with respect to all of the Plaintiffs' claims they were all discovered or discoverable prior to July 28, 2010 and given the action was commenced on July 27, 2016 the claims are statute barred and summary judgment should be granted.

[79] As set out above, the brief filed on behalf of the Plaintiffs centers around arguments pursuant to the provisions of the ***Real Property Limitations Act***, the former ***Limitation Of Actions Act*** and the current ***Limitation Of Actions Act***. It does not specifically address when the various Plaintiffs first discovered their claims against the Defendants, other than stating the Plaintiffs became aware of the alleged fraud in December 2006 (para. 18 of brief). In oral argument, Mr. Fawson, on behalf of the Plaintiffs, said again that the Plaintiffs (at least RJOR) were aware of the four Form 49s filed by December 2006. However, the Affidavits filed on behalf of the Plaintiffs shed light on when the potential claims against the Defendants were discoverable or discovered.

Discoverability Findings:

River John Oceanfront Resort Limited (RJOR)

[80] I find that the claims being advanced on behalf of RJOR were known by the principals of the corporate entity at the latest on December 1, 2006. On that date RJOR and various individuals who are not named Plaintiffs in this action complained about Mr. Bureau's legal representation to the NSBS. In the complaint form they indicate they had legal counsel, "Ronald Pizzo – plus Michael Tweel". In the section entitled "Details of Complaint" the following is stated:

> Mr. Bureau was solicitor for our company. He was given instructions to pay off debts-through us obtaining mortgages from institution (Financial) and shareholder

> and private individuals - he was to postpone some debts and pay off some debts along with registering releases. He did not do this as per our instructions to him instead he registered release on all properties and then two years later registered a letter with the registry office trying to fix the problem. By his own actions he has alienated our shareholders from the company and immobilize the company from doing business, and selling off our properties. His actions have created a heavy financial burden that do to not being able to sell of some of our land and building assets we are facing foreclosure. Our loss could range from $60,000-$250,000 plus a loss to our shareholders of $68,000. Mr. Bureau also sent one of our investors (Alexander Gillis) to Mr. Tim Hill lawyer to take legal action against our company…

It goes on to say:

> We would like Mr. Bureau to (a) make financial restitution to our company and shareholder (2) and own up to his mistakes.

[81] In 2005, the principals of RJOR had considerable detail about the transactions in issue. It is noteworthy that RJOR had been sued by Mr. Gillis on February 1, 2005 in relation to release of the two Gillis mortgages without payout.

[82] Lynda Fawson, in her Affidavit, states that during the balance of 2005 and 2006 there were attempts by various lawyers to have the Defendants register a Release of the St. Clair $68,250 mortgage which had been paid out. There are no details provided of these attempts (Affidavit of L. Fawson, para. 8).

[83] Mr. Morrison also says at para. 5 of his Affidavit:

> . . . in late 2005, the RJOR project people approached myself and my wife, Roberta Morrison, to discuss the possibility of doing some short-term financing for the project. It was explained to us that there had been some turmoil with the project due to the Defendants having released two mortgages by Alexander Gillis without payout…. It was explained that these two actions had severely restricted the project's capacity to move forward . . .

[84] Although the principals had some information in 2005, I find the date of discoverability to be December 1, 2006, the date the complaint was filed with the NSBS. The Plaintiff RJOR had discovered its claims as it knew each of the items listed in Section 8(2) of the Act. It is obvious, from the contents of the written complaint, the principals knew:

- that injury loss or damage had occurred (they clearly state loss has occurred to both RJOR and shareholder);

- that the injury, loss or damage was caused by or contributed to by an act or omission (they set out what Mr. Bureau was asked to do and what they say he did instead);

- that the act or omission was that of Mr. Bureau (the complaint is specific to Mr. Bureau and his actions); and

- the injury, loss or damage was sufficiently serious to warrant a proceeding (they indicate by his actions he " has alienated our shareholders from the company and immobilized the company from doing business and selling off our properties. His actions have created a heavy financial burden that due to not being able to sell off some of our land and building assets we are facing foreclosure. Our losses range from $60,000-$250,000)."

[85] Given the date of discoverability regarding RJOR's claims is December 1, 2006, the six-year limitation period would have expired by 2012. The action was commenced on July 27, 2016 almost four years after the expiry of the limitation period.

[86] When the Defendants prove the facts supporting the expiry of the limitation period, the Plaintiff RJOR must then prove that the limitation period has not expired because of, for example, the discoverability principle. It has not done so. I must now address whether s. 3 of the former Act is applicable.

Is s. 3 of the former Limitation of Actions Act available to disallow a limitation period defence and, thereby, potentially extend the limitation period?

[87] The Plaintiffs claim s. 3 of the former ***Limitation of Actions Act*** applies in the circumstances of this matter and is applicable to extend the limitation periods for a further four years.

[88] The following are the relevant portions of s. 3 of the former legislation:

> **Disallowance or invocation of time limitation**
>
> . . .
>
> Section 3 (2) Where an action is commenced without regard to a time limitation, and an order has not been made pursuant to subsection (3), the court in which it is brought, upon application, **may disallow a defence based on the time limitation and allow the action to proceed if it appears to the court to be equitable** having regard to the degree to which

(a) the time limitation prejudices the plaintiff or any person whom he represents; and

(b) any decision of the court under this Section would prejudice the Defendant or any person whom he represents, or any other person . . .

Section 3(6) A court shall not exercise the jurisdiction conferred by this Section where the action is commenced, or notice given more than four years after the time limitation therefor expired.

[emphasis added]

[89] The Defendants say the opportunity to apply for such an extension ceased to exist after September 1, 2015 when the former Act was repealed. They say the right to apply for a discretionary extension of time is not a vested right that survives the passage of new legislation. They refer to ***Iroquois Falls Power Corp. v. Jacobs Canada Inc.***, 2008 ONCA 320, where the Ontario Court of Appeal stated at paras. 21 to 23:

21 As I see it, the question is a matter of straightforward statutory interpretation. Section 46(1) of the PES stated that proceedings for damages arising from professional engineering services could not be commenced after twelve months. Read on its own, the section unequivocally stipulated a limitation period. Section 46(2) did not detract from this, but confirmed it by referring to " the limitation period specified in subsection (l)". Rather than qualifying the limitation period, s 46 (2) bestowed the court with jurisdiction to extend 'the limitation period' in its discretion.

22 The appellant had not applied for an extension of the limitation period prescribed by s. 46(1) when the court's jurisdiction to grant an extension was repealed by the Limitations Act, 2002 on January 1, 2004. Any right the appellant had to apply for an extension prior to the repeal of s. 46(2) was not an accrued or vested right. As Chouinard J wrote in Québec (Expropriation Tribunal) v. Québec (Attorney General) [1986] 1 SCR 732 at 742

> A vested right is one which exists and produces effects. That does not include a right which could have been exercised but was not and which is no longer available under the law. The courts and scholarly commenters distinguish between a vested right and what they call a possibility or an option.

23 Since the right was not vested, the motion judge was correct that as a consequence of the repeal of s. 46(2) he could no longer grant an extension of the limitation period on application made after January 1, 2004. The motion judge correctly decided that there was no genuine issue for trial as to whether the limitation period for bringing a claim in respect of professional engineering services had expired.

[90] I find the equitable provisions of s. 3 of the former Act to disallow a defence based on a time limitation are not available to the Plaintiffs. The section was repealed prior to this action having been commenced. If the legislature had intended for this section to remain applicable it would have said so -- it did not. Nowhere in the new Act does the legislature indicate that s. 3, although repealed, is still applicable. The wording used in s. 23(3)(a) "the day on which the former limitation period expired or would have expired" does not reference nor engage the s. 3 provisions of the former Act. Nor do I see any basis within the clear wording of s. 23 to infer the legislature intended to include the discretionary provisions under s. 3 when it used the words "former limitation period". In fact, "former limitation period" is specifically defined in s. 23 as follows:

> 23 (1) in this section,
>
> (c) 'former limitation period" means, in respect of a claim, the limitation period that applied to the claim before the effective date.

[91] Under the former Act, s. 2 contains the heading "Limitation Periods". Within that section is the six-year limitation period applicable to the claims being advanced by the Plaintiffs (s.2(e)). Section 2 of the former Act unequivocally sets out the limitation period for the claims in issue here. There is no need to look anywhere other than s. 2 of the former Act to determine the "former limitation period".

[92] Section 3, which contained the equitable extension provisions, was a completely separate section to that containing the applicable limitation periods. The heading for s. 3 was "Disallowance or Invocation of Time Limitation". Section 3 did not contain any limitation periods. Section 3, prior to repeal, gave the Court the discretion to disallow a defence based on "a time limitation" (being a limitation period) where the Court determined it was equitable to do so in accordance with the very specific provisions of s. 3.

[93] The s. 23(1)(c) wording "the limitation period that applied to the claim before the effective date" cannot logically be interpreted to mean both the limitation period set out in former s. 2 and the possibility of the Court using its discretion to disallow a defence based on a time limitation under s. 3.

[94] The situation here is similar to that in the ***Iroquois*** case and, I suggest, here there is an additional factor against s. 3 being applicable as, in that case, the extension provision was in the same section, whereas here the referenced provisions (s. 3) are in a separate section of the former Act, a section dealing with

disallowing a limitations defence. I find that s. 3 of the former Act is not available to the Plaintiffs.

[95] Therefore, with regard to the RJOR claims, the Defendants have established there are no genuine issues of material fact -- either pure or mixed -- with a question of law, nor does the challenged pleading require a determination of a question of law. Summary judgment must be granted in relation to RJOR's claims against the Defendants.

Alexander Gillis

[96] In relation to the claims by Alexander Gillis, I find the date of discoverability of any potential claims against the Defendants to be February 24, 2006 which is the date of the first legal opinion Mr. Gillis received concerning potential action against the Defendants (Gillis Affidavit, Exhibit 8, and Bureau Affidavit, Exhibit 17). The letter from Mr. Hill states:

> Further to our various emails and telephone conversations with respect to this matter, I confirm that you have asked me to review the role of Richard Bureau ('Bureau') in the mortgage transactions between you and River John Oceanfront Resort Limited ('River John') and the subsequent discharge of your mortgages. You seek advice as to whether or not any liability might rest with Bureau for your losses on those loans.

As Mr. Gillis said in his Affidavit at para. 14:

> … It was these opinions by trained legal people that made me realize that the people at the RJOR project were not responsible for the release without payout of my mortgages. It was, in fact, the Defendants who were responsible for the inappropriate release without payout.

[97] At the date of the legal opinion Mr. Gillis knew he had suffered loss, believed it to be as a result of an act or omission of the Defendants and that his loss was sufficiently serious to warrant a proceeding. In fact, for this exact loss he had previously initiated a proceeding against RJOR and various individuals associated with the project.

[98] As the date of discoverability regarding Alexander Gillis's claims is February 24, 2006, the six-year limitation period for the various claims would have expired by February of 2012. The action was commenced more than four years later on July 27, 2016.

[99] When the Defendants prove the facts supporting the expiry of the limitation period, the Plaintiff, Alexander Gillis, must present evidence that the limitation period has not expired, for example, because of the discoverability principle. He has not done so. The Defendants have established there are no genuine issues of material fact relating to Mr. Gillis's claims against the Defendants, nor is there a question of law to be decided. Therefore, summary judgment must be granted in relation to Mr. Gillis's claims against the Defendants.

Roberta and Gerald Morrison

[100] With regard to the claims against the Defendants by the Morrisons, I find the date of discoverability is June 29, 2007.

[101] The Affidavit of Gerald Morrison states at paras. 9 and 10:

> 9 Roberta and I eventually took steps to sell the lots granted in our promissory note/mortgage with the RJOR project. On June 29, 2007 a quit claim deed was issued to an acquaintance of ours living in Toronto, Robin Roy Williams.
>
> 10 **It was at this same time that we were advised that the Defendants had registered four form 49 changes on April 6, 12, 26 and May 2, 2006 respectively**, to reinstate an Anna St. Clair $88,000 mortgage between herself and the RJOR project which had been fraudulently released on October 7, 2004. **These changes effectively placed a second charge against lot number 15, 16 and 17.** Through lawyers' communications, it became clear that Anna St. Clair desired full payment of her $88,000 mortgage prior to releasing her second charge on these lots. **As each lot was then worth approximately $12,000, the transaction to Robin Roy Williams and, in fact, any future potential purchaser, was not completed."**
>
> [emphasis added]

[102] Mr. Morrison also says at para. 5 of his Affidavit:

> 5 In late 2005, the RJOR project people approached myself and my wife, Roberta Morrison, to discuss the possibility of doing some short-term financing for the project. **It was explained to us that there had been some turmoil with the project due to the Defendants having released two mortgages by Alexander Gillis without payout**.
>
> . . .
>
> It was explained that these two actions had severely restricted the projects capacity to move forward…

[emphasis added]

[103] The deal with Robin Roy Williams was very close to completion on June 29, 2007. A Quit Claim Deed had been prepared as had a Deed Transfer Affidavit of Value. Attached as Exhibit 7 to Mr. Morrison's Affidavit is an executed Deed Transfer Affidavit of Value indicating a sale purchase price of $38,722.69.

[104] Based on the above statements, I find the Morrisons were aware, in relation to their alleged claims against the Defendants, that injury, loss or damage had occurred, that the injury, loss or damage was caused by or contributed to by an act or omission, that the act or omission was that of the Defendants and that the injury, loss or damages were sufficiently serious to warrant a proceeding. The Morrisons had legal counsel. They were advised of the four Form 49s being registered and were aware of the effect on their lots. As Mr. Morrison states, "These changes effectively placed a second charge against lots 15, 16 and 17."

[105] As the date of discoverability regarding Morrisons claims is June 29, 2007, the six-year limitation period would have expired by June of 2013. The action was commenced almost three years later on July 27, 2016.

[106] When the Defendants prove the facts supporting the expiry of the limitation period, the Morrisons must present evidence that the limitation period has not expired because of, for example, the discoverability principle. They have not done so. In addition, the repealed s. 3 of the former Act is not available to disallow a limitation period defence. I find there is no genuine issue of material fact relating to the Morrisons' claims against the Defendants, nor is there a question of law to be decided. Therefore, summary judgment must be granted in relation to their claims against the Defendants.

[107] I note the Defendants say, regardless of whether s. 3 is applicable, the causes of action were all discovered more than ten years before the Plaintiffs filed the action (being the six-year limitation period and the maximum four-year equitable extension formerly available under s. 3). I do not find that to be the case for the Morrisons' claims nor the RJOR claims but only for the Gillis claims. If s. 3 and the equitable remedy were available with reference only to the Gillis claims, even with a four-year extension the claims are still out of time. With a discoverability date of February 24, 2006, the six-year limitation period would have expired by February of 2012 and any four-year extension would have expired in February 2016. The action was commenced on July 27, 2016. However, as noted above, I find s. 3 under the former Act was repealed and is not available to the Plaintiffs.

Conclusion:

[108] The Defendants have established there are no genuine issues of material fact, either pure or mixed with a question of law, nor does the challenged pleading require a determination of a question of law. Therefore, summary judgment must issue in relation to all of the Plaintiffs' claims.

[109] If the parties are unable to agree on costs, I will receive written submissions within 30 calendar days of this oral decision. I suggest Mr. Kingston prepare the form of Order.

Jamieson, J.