

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Yarmouth (District) v. Nickerson*, 2017 NSCA 21

**Date:** 20170309

**Docket:** CA 447081

**Registry:** Halifax

**Between:**

The Municipality of the District of Yarmouth,  
a municipal body corporation

Appellant

v.

Derek Todd Nickerson, Gwen E. Nickerson, Robert Gordon Leggett,  
Patricia Rosemary Leggett, Anthony Barney Bourque, Marie Hope  
Bourque, Achille Fulgence LeBlanc a.k.a. Archie LeBlanc (Estate of)  
and A.F. LeBlanc & Son Excavating Limited, a body corporate

Respondents

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**Judge:** The Honourable Justice Duncan R. Beveridge

**Appeal Heard:** October 3, 2016, in Halifax, Nova Scotia

**Subject:** Statutory interpretation; applicability of the *Limitation of Actions Act* to an historical claim of negligent inspection by municipal officials

**Summary:** The owners of a house sued the previous property owners because their home was damaged from soil subsistence. One of those previous owners brought a third party claim against Yarmouth, claiming it was negligent in issuing permits or inspecting the lot and ensuing construction of the house. Yarmouth brought a summary judgment motion based on s. 504(3) of the *Municipal Government Act* which stipulated that “Notwithstanding the *Limitation of Actions Act*”, municipalities were “not liable” for any losses if the claim was made more than six years after the permit application date. The third party claim was well past six years. The

motion was dismissed. The motion judge relied on earlier decisions of this Court that dealt with the *Defamation Act*. He concluded that a defence based on s. 504(3) was a limitation period which could be avoided by the equitable relief provisions in s. 3(2) of the *Limitations of Actions Act*.

**Issues:**

- (1) What was the proper statutory interpretation of s. 504(3) of the *Municipal Government Act*?
- (2) Is the time period set out in s. 504(3) a “time limitation” within the meaning of the *Limitation of Actions Act*?

**Result:**

Leave to appeal is granted and the appeal allowed. The motion judge erred in relying on decisions that dealt with the interpretation of the *Defamation Act* and the *Limitation of Actions Act*. While those decisions were, and remain sound, they do not dictate the determination of the appropriate interpretation of the *Municipal Government Act* and the *Limitation of Actions Act*. Applying the correct principles of statutory interpretation, municipalities are exempt from liability six years after the relevant permit application date. It is not a limitation period within the meaning of the *Limitation of Actions Act*.

*This information sheet does not form part of the court’s judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 20 pages.*