

NOVA SCOTIA COURT OF APPEAL

Citation: Nova Scotia Home for Coloured Children v. Milbury, 2007 NSCA 52

Date: 20070504

Docket: CA 275523

Registry: Halifax

Between:

Nova Scotia Home for Coloured Children and
Family and Children's Services of Annapolis County

Appellants

v.

Elizabeth Ann Milbury

Respondent

Judge: The Honourable Justice Roscoe

Appeal Heard: April 2, 2007

Subject: **Civil Procedure Rule** 13.01, summary judgment application,
limitation of actions, discoverability

Summary: The plaintiff had resided at the NS Home for Coloured Children for several months when she was one to two years old between 1946 and 1947. In 2003 she brought an action against the Home and the child welfare agency which had placed her at the Home, claiming that she had been physically and emotionally abused when she lived there. The action was framed in negligence, breach of contract, vicarious liability for the assaults by staff of the Home, and breach of fiduciary duty.

The defendants brought an application for summary judgment claiming that the action was statute barred. On the day of the hearing the plaintiff amended the statement of claim to add particulars to the breach of fiduciary duty claim, specifically that the Home was run as a plantation that exploited the children who were placed there.

The chambers judge granted the summary judgment application in relation to the breach of fiduciary duty claim but dismissed it in

respect to the other causes of action.

The Home and the Agency appealed and the plaintiff cross appealed.

Issues: Did the chambers judge err in not granting summary judgment on the claims in negligence, breach of contract and vicarious liability?
Did the chambers judge err in finding there was no arguable issue for trial on the fiduciary duty claim?

Result: Appeal and cross appeal allowed. Summary judgment should have been granted on the claims in negligence, breach of contract and vicarious liability because the limitation periods had expired in 1972 and the plaintiff filed no evidence to establish that the discoverability rule might extend the time limit beyond 1972. Therefore there was no real chance of success at trial.

There is no limitation period for a claim of breach of a fiduciary duty. The chambers judge erred in placing the burden on the plaintiff when the defendants had not established that there was no genuine issue for trial on the claim for breach of fiduciary duty.

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 16 pages.