

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**Citation:** MacDougall v. Nova Scotia (Attorney General), 2008 NSSC 88

**Date:** 2008/03/28  
**Docket:** S. Sn. No. 280422  
**Registry:** Halifax

1992

**IN THE MATTER OF:** An application by JOSEPH FARRELL, IAN MCDUGALL, LISA FARRELL, JANICE MCDUGALL, LESLIE MACDONALD AND STEPHEN FARRELL to be added as defendants in the proceeding within; and

**IN THE MATTER OF:** An action under the Quieting Titles Act, R.S.N.S. 1989, C.382

**Between:**

David Louis MacDougall

Plaintiff

v.

The Attorney General of the Province of Nova Scotia  
Stan MacIsaac, Verna MacIsaac, and Patricia Kunze

Defendants

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice A. David MacAdam

**Heard:** December 3,4 and 5 2007, in Sydney, Nova Scotia

**Final Written Submissions:** December 13, 2007

**Subject:** *Civil Procedure Rule 15.08* - Re-opening a Proceeding - Quieting Titles - Limitation Period - Delay - Fraud

**Summary:** The applicants sought to have a *Quieting Titles Act* proceeding reopened, on the basis they never received notice that their rights to use a particular lane, by which they accessed their lots, would be affected. The original proceeding was commenced in 1992 and concluded by consent order in 1996, with a Certificate of Title issued to the defendants, S. and V.

MacIsaac The Certificate of Title included the lane, although these defendants had not specifically sought it, and had not given any notice indicating they were seeking title to land containing the lane. However, the Applicants, or their predecessors in title, continued to use the lane until 2005, when they were notified by a counsel for these defendants that they were no longer permitted to use the lane.

In the course of the original proceeding, the defendants had been directed by the Court to give notice to “conflicting property rights of which they are aware or ought to be aware.” With respect to the majority of the applicants, the evidence did not support the conclusion that either they, or their predecessors in title, had not received sufficient notice. As such, their applications were dismissed. The exception was Dr. Edward Stephen Farrell, who had received no notice of either the plaintiff’s or the defendants’ claims. While a Certificate of Title pursuant to the *Quieting Titles Act* extinguishes any prescriptive title, there was a factual basis upon which to reopen the matter under Rule 15.08. Further, while inordinate delay would normally militate against reopening, in this case the delay was caused by the respondents’ failure to notify other potentially concerned property owners that they had obtained exclusive use of the lane. While section 17 of the *Quieting Titles Act* sets out a one-year limitation period for applications to re-open on the basis of fraud, to apply this provision in this instance would mean that a person who misled the Court in order to obtain a Certificate of Title could eliminate any possible challenge to their title by not advising those affected until the limitation period had expired, which could not have been the intention of the legislature.

**Issue:** Are the applicants, or any of them, entitled to have the proceeding reopened in order to allow them to file notices of claim to the use of the lane.

**Result:** Given the threat to the integrity of the litigation process, Dr. Farrell’s application was allowed. The other applications were dismissed.

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