SUPREME COURT OF NOVA SCOTIA
Citation: Corfu Investments Ltd. v. Oickle, 2011 NSSC 119

Date: 20110323
Docket: Hfx. No. 298682
Registry: Halifax

Between:

Corfu Investments Ltd.

Plaintiff

v.

Anna Oickle and Clayton Oickle

Defendants

Judge: The Honourable Justice Peter Rosinski

Heard: March 9, 2011, in Halifax, Nova Scotia

Counsel: Ian Dunbar and Michael Blades, for the Plaintiff
Alex Embree, for the Defendants

BACKGROUND

[1] On November 2, 2005, the rented apartment of Clayton and Anna Oickle caught fire. Substantial damages pleaded to be approximately $55,000 ensued. Pleadings suggest that an investigation revealed that "improper disposal of smoking materials" was the cause.

[2] Corfu Investments Ltd. ("Corfu") as landlord of the premises, started an action in Nova Scotia Supreme Court July 15, 2008, to which Anna Oickle ("Oickle") filed a defence on September 11, 2009. The Plaintiff's pleadings were amended by consent order February 9, 2011.

[3] Clayton Oickle is alleged to have been negligent in his "disposal of smoking materials". He was an occupier, and "tenant" as defined in the *Residential Tenancies Act* (RTA), although he had not signed the lease. Corfu pleads that Oickle is liable for the damages because she signed the lease and the lease contained statutory condition # 4:

> Obligation of the tenant – **the tenant is responsible for the** ordinary cleanliness of the interior of the premises and for the repair of damage caused by wilful or

> **negligent act of** the tenant or **any person whom the tenant permits on the premises**.

[4] Corfu alternatively pleads that Oickle "is [vicariously] liable at common law for the damage... caused by Clayton Oickle".

THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON THE PLEADINGS

[5] The Defendant Oickle, citing *Civil Procedure Rule* 13.03(1), argues that the pleadings reveal:

> (i) ... no cause of action... against Oickle; and
>
> that (ii) the exclusive jurisdiction over the subject matter of the pleadings lies with the authorities under the *Residential Tenancies Act*, RSNS 1989, c. 401

[6] In summary, the Defendant argues that the Nova Scotia Supreme Court does not have jurisdiction to deal with "residential tenancies matters" – para. 18 Oickle brief; and that because a landlord-tenant relationship existed (which makes the *Residential Tenancies Act* ("*RTA*") applicable) the *Act* is the sole source of redress and the common law is inapplicable unless brought into play by the *RTA*.

[7] I find the Defendant's argument persuasive and allow the motion for summary judgment on pleadings. I will now explain why.

ANALYSIS

1 - The Principles of Statutory Interpretation

(i) Oickle argues that the *RTA* authorities have exclusive jurisdiction over any matter arising out of a dispute involving residential tenancies.

[8] The Defendant's position is premised on its preferred interpretation of the *RTA.*

[9] The principles of statutory interpretation were recently reviewed by Oland, JA for the Court in *Coates v. Capital District Health Authority*, 2011 NSCA 4 ["Coates"].

[10] Oland, JA, set out those general principles[1]:

> 36 In *Cape Breton (Regional Municipality) v. Nova Scotia (Attorney General)*, 2009 NSCA 44, (2009), 277 N.S.R. (2d) 350, this court reiterated:
>
> > [36] The Supreme Court of Canada had endorsed the "modern approach" to statutory interpretation as expounded by Elmer Driedger, **Construction of Statutes**, 2nd ed. (Toronto: Butterworths, 1983) at p. 87:
> >
> > > ... the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
> >
> > See Re Rizzo and Rizzo Shoes Ltd., [1998] 1 S.C.R. 27 at 41; Canada (House of Commons) v. Vaid, 2005 SCC 30, [2005] 1 S.C.R. 667; and Imperial Oil Ltd. v. Canada; Inco Ltd. v. Canada, 2006 SCC 46, [2006] 2 S.C.R. 447.
>
> It then referred to Professor Ruth Sullivan's explanation of this modern approach in Sullivan on the Construction of Statutes, 5th ed. (Markham: LexisNexis Canada Inc., 2008) and summarized:
>
> > [40] ... Professor Sullivan would invite us to answer three questions:
> >
> > > Under the modern principle, an interpreter who wants to determine whether a provision applies to particular facts must address the following questions:

[1]At paras 36 - 37

- what is the meaning of the legislative text?

- what did the legislature intend? That is, when the text was enacted, what law did the legislature intend to adopt? What purposes did it hope to achieve? What specific intentions (if any) did it have regarding facts such as these?

- what are the consequences of adopting a proposed interpretation? Are they consistent with the norms that the legislature is presumed to respect?

[41] Finally, in developing our answers to these three questions, Professor Sullivan invites us to apply the various "rules" of statutory interpretation:

> In answering these questions, interpreters are guided by the so-called "rules" of statutory interpretation. They describe the evidence relied on and the techniques used by courts to arrive at a legally sound result. The rules associated with textual analysis, such as implied exclusion or the same-words-same-meaning rule, assist interpreters to determine the meaning of the legislative text. The rules governing the use of extrinsic aids indicate what interpreters may look at, apart from the text, to determine legislative intent. Strict and liberal construction and the presumptions of legislative intent help interpreters infer purpose and test the acceptability of outcomes against accepted legal norms.

[11] In my view, the starting point may be found in the recent decision of Justice Binnie for the Court in *Canada (Attorney General) v. TeleZone Inc.*[2]

[2] 2010 S 62, [2010] SCJ No. 62 (Q.L.). [“TeleZone Supreme Court”]

[12] In that case, the Attorney General of Canada challenged the jurisdiction of the Ontario Superior Court to proceed with a claim based on breach of contract, negligence, and alternatively unjust enrichment, in light of the jurisdiction of the Federal Court. At issue was whether, because the Federal Court has "exclusive original jurisdiction" to hear applications for relief [i.e., the extraordinary remedies] against any "federal board, commission or other tribunal", does that preclude the Superior Courts from hearing such matters even insofar as they deal with compensation for alleged losses? The Supreme Court found that it did not.

[13] Under the heading "The Jurisdiction of the Provincial Superior Courts", Justice Binnie, for the Court, stated[3]:

> *D. The Jurisdiction of the Provincial Superior Courts*
>
> 42 What is required, at this point of the discussion, is to remind ourselves of the rule that **any derogation from the jurisdiction of the provincial superior courts (in favour of the Federal Court or otherwise) requires clear and explicit statutory language:** "[The] ouster of jurisdiction from the provincial superior courts in favour of vesting exclusive jurisdiction in a statutory court ... requires clear and explicit statutory wording to this effect": *Ordon Estate v. Grail*, [1998] 3 S.C.R. 437, at para. 46; see also *Pringle v. Fraser*, [1972] S.C.R. 821, at p. 826; *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626, at para. 38. The Attorney General's argument rests too heavily on what he sees as the negative implications to be read into s. 18.

[3] Ibid paras. 42 - 45

> 43 The oft-repeated incantation of the common law is that "nothing shall be intended to be out of the jurisdiction of a Superior Court, but that which specially appears to be so; and, on the contrary, nothing shall be intended to be within the jurisdiction of an Inferior Court but that which is so expressly alleged": *Peacock v. Bell* (1667), 1 Wms. Saund. 73, 85 E.R. 84, at pp. 87-88. **In contrast, the jurisdiction of the Federal Court is purely statutory.**
>
> 44 The term "jurisdiction" simply is shorthand for the collection of attributes that enables a court or tribunal to issue an enforceable order or judgment. A court has jurisdiction if its authority extends to "the person and the subject matter in question and, in addition, has authority to make the order sought": *Mills v. The Queen*, [1986] 1 S.C.R. 863, per McIntyre J., at p. 960, quoting Brooke J.A. in *R. v. Morgentaler* (1984), 41 C.R. (3d) 262, at p. 271, and per Lamer J., dissenting, at p. 890; see also *R. v. Rahey*, [1987] 1 S.C.R. 588, at p. 603; *R. v. 974649 Ontario Inc.*, 2001 SCC 81, [2001] 3 S.C.R. 575, at para. 15; *R.v.Conway*, 2010 SCC 22, [2010] 1 S.C.R. 765. The Attorney General does not deny that the Superior Court possesses in personam jurisdiction over the parties, or dispute the superior court's authority to award damages. The dispute centres on subject matter jurisdiction.
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> 45 It is true that apart from constitutional limitations (see, e.g., *Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 S.C.R. 307, and cases under s. 96 of the *Constitution Act*, 1867, which are not relevant here), Parliament may by statute transfer jurisdiction from the superior courts to other adjudicative bodies including the Federal Court. It did so, for example, with respect to the judicial review of federal decision makers: *Canada Labour Relations Board v. Paul L'Anglais Inc.*, [1983] 1 S.C.R. 147, at p. 154. However, **the onus lies here on the Attorney General to establish the existence and extent of such a transfer of jurisdiction in statutory terms that are clear, explicit and unambiguous**. [Emphasis added]

[14] What “clear, explicit and unambiguous” statutory language can the Defendant Oickle point to?

(ii) The Effect of the 1996 *RTA* Reference Case

[15] Oickle's argument largely rises or falls on the words of the Justices in the Supreme Court of Canada decision, *Reference re*: *Amendments to the Residential Tenancies Act (N.S.)*. [4]

[16] In that case, the issues were stated as:

> 1. Are the unproclaimed provisions of An Act to Amend Chapter 401 of the Revised Statutes, 1989, the Residential Tenancies Act, S.N.S. 1992, c. 31 (the "Act"), within the legislative jurisdiction of the House of Assembly of Nova Scotia to the extent that those provisions confer authority respecting residential tenancies upon persons other than judges appointed pursuant to s. 96 of the Constitution Act, 1867, and, most particularly, are the following provisions of the Act within the legislative jurisdiction of the House of Assembly of Nova Scotia?
>
> 2. If the aforesaid provisions of the Act are not within the legislative jurisdiction of the House of Assembly of Nova Scotia, in what particular respects are those provisions ultra vires?[5]

[17] Ultimately three judgments were rendered in response:

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[4] [1996] 1 SCR 186 (hereafter "1996 *RTA* Reference")

[5] - Ibid at para. 10

1. Lamer, C.J.C. (Sopinka and Cory, JJ concurring) found the legislation valid[6]:

> 31 The appellant and the Attorneys General of Manitoba, Ontario and Quebec argued that the grant of jurisdiction by the Nova Scotia legislature to the Residential Tenancies Board (and Director) is permissible because the jurisdiction over "disputes involving residential tenancies" is a novel jurisdiction and therefore not part of the jurisdiction reserved to s. 96 superior court judges. I am of the view that the appellant and interveners are correct. This appeal can therefore be disposed of by applying this Court's decision in Reference re Young Offenders Act. I begin my analysis by characterizing the jurisdiction in question and finish with an assessment of whether that jurisdiction is a novel one.

[18] But he cautioned[7]:

> 66 Finally, I wish to add that in this case our review of the impugned legislation has been undertaken from a broad perspective in light of the overall policy aims of the Nova Scotia Residential Tenancies Act. In particular, the focus of the inquiry has been on the creation of a provincial "residential tenancies" director or tribunal to adjudicate residential tenancies disputes. **Our approval of the Nova Scotia Residential Tenancies Act should in no way be taken as precluding a separate analysis in a future case of whether a particular provision of that Act or similar act is constitutionally infirm. See MacMillan Bloedel, supra.** [Emphasis added]

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[6] - Ibid para. 31

[7] - Ibid para. 66

2. McLachlin, J. (as she then was) (Laforest, L'Heureux-Dubé, Iacobucci and Major, JJ concurring) also found the legislation valid[8]:

> 92 In summary, the evidence adduced in this case demonstrates that the superior courts of Canada did not enjoy exclusive jurisdiction over tenancy disputes at the time of Confederation. **In every former colony inferior courts exercised a significant concurrent jurisdiction at or about the time of Confederation. It follows that the Nova Scotia House of Assembly's conferral of jurisdiction over residential tenancies on a provincially appointed tribunal does not violate s. 96 of the Constitution Act, 1867.**

[19] And she followed that observation with[9]:

> 93 While this is sufficient to dispose of the appeal, I propose to consider the alternative argument that the legislation at issue confers a "novel jurisdiction" neither exercised nor contemplated by any court at the time of Confederation. In my view, the power conferred on provincially appointed officials by the legislation here at issue does not represent a new jurisdiction, but rather **simply a reorganization for administrative reasons of a jurisdiction which has been exercised by superior and inferior tribunals in Canada since before Confederation.** [Emphasis added]

3. Gonthier, J. agreed with McLachlin, J. that the jurisdiction over residential tenancy matters was not a "novel jurisdiction" but rather[10]:

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[8] - Ibid para. 92

[9] - Ibid para. 93

[10] - Ibid para. 109

> For the reasons of McLachlin J., I share her conclusion "that the superior courts of Canada did not enjoy exclusive jurisdiction over tenancy disputes at the time of Confederation" and that **"[i]n every former colony inferior courts exercised a significant concurrent jurisdiction at or about the time of Confederation"** (para. 92). [Emphasis added]

[20] In spite of the Justices having taken differing routes to the same result, Oickle argues there is a consensus around the notion that the Legislature, through the various versions of the *RTA*, up to and including the present version, intended to, and did, take all the jurisdiction to deal with residential tenancy matters from s. 96 courts which had concurrent jurisdiction to deal with them at the time of Confederation, and gave that jurisdiction **exclusively** to the *RTA* authorities.

[21] Notably, that issue was not argued, and therefore not addressed by the Court in the *1996 RTA Reference*. It is consequently somewhat speculative to assert that the words of the Justices in that case are indications of how they may decide the issue in the case at Bar. Nevertheless what jurisdiction was being considered as transferred to the *RTA* authorities, and what residual or concurrent jurisdiction remained vested in Superior Courts, is contingent on what did the Supreme Court Justices mean when they referred to “residential tenancy disputes”?

[22] Oickle's argument foucssed on comments by Lamer, C.J.C. wherein he struggled with what should be the proper characterization, in the constitutional law context, of the jurisdiction being transferred to the RTA authorities.

[23] He concluded that[11]:

> 12 **... the proper characterization of the unproclaimed provisions is "jurisdiction over residential tenancies; disputes between residential landlords and tenants".** This characterization captures the "raison d'être" of the legislation. The Residential Tenancies Act of Nova Scotia is not meant to be a replica of landlord and tenant law. **It sets up a complete and comprehensive code independent of landlord and tenant law which is specially designed for governing the residential tenancy relationship.** [Emphasis added]

[24] Moreover, he repeatedly refers to "residential tenancy" ,"disputes" and "matters".

[25] He also refers to "detailed legislative code" [para. 46]; "a complete code to govern the residential tenancy relationship" [para. 52]; "statutory rules which are to govern every aspect of the residential landlord and tenant relationship" [para. 53].

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[11] - 1996 *RTA* reference paras. 32 - 35

[12] Ibid para. 35

[26] Chief Justice Lamer's words could be read, at least superficially, as supporting Oickle's position that the jurisdiction of the Supreme Court is entirely ousted in her case, and only the RTA authorities can deal with the Plaintiff's claim against her.

[27] Oickle argues that Chief Justice Lamer's words, "a complete code to govern the residential tenancy relationship", mean that in **all** aspects of law which involve a residential tenancy relationship, the RTA applies, and the authorities under the RTA have exclusive original jurisdiction to deal with all manner of such disputes.

[28] However, if one goes on, Lamer, C.J.C. also discusses what are the "hallmarks of residential tenancy disputes". He notes that they include the following characteristics[13]:

> First, the majority of disputes are over minor matters such as unpaid rent and security deposits...
>
> Second, the dollar amount of the disputes is relatively minor, and

[13] - Ibid at para. 58

> Finally, residential tenancies are a largely urban phenomenon with most of the disputes located in the cities.

[29] He concludes[14]:

> 63 In light of the nature of residential tenancy disputes and the types of disputes entertained by many **pre-Confederation inferior courts, it is reasonable to conclude that pre-Confederation legislatures would have vested residential tenancy jurisdiction in those courts**. **As Freeman J.A. describes, residential tenancy disputes involve a high volume of repetitive and narrowly defined matters of limited complexity.** They are amply suited to resolution by lay persons applying the rules with fairness and common sense. These were the hallmarks of the cases entertained by many pre-Confederation inferior courts.
>
> [Emphasis added]

[30] One might conclude Lamer, C.J.C. implicitly recognized a residual jurisdiction of Superior Courts regarding "residential tenancy disputes" that were **not minor.** McLachlin, J. (as she then was) for herself and Laforest, L'Heureux-Dubé, Iacobucci and Major, JJ stated in the Majority concurring judgment[15]:

> 92 In summary, the evidence adduced in this case demonstrates that the superior courts of Canada **did not enjoy exclusive jurisdiction over tenancy disputes** at the time of Confederation. **In every former colony inferior courts exercised a significant concurrent jurisdiction at or about the time of**

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[14] - Ibid at para. 63

[15] - Ibid at paras. 92, 84, 85 and 103 - 104 respectively

Confederation. It follows that the Nova Scotia House of Assembly's conferral of jurisdiction over residential tenancies on a provincially appointed tribunal does not violate s. 96 of the *Constitution Act, 1867.*

...

84 **In Nova Scotia, the power to resolve residential tenancy disputes was shared by the superior courts, the Halifax City Court and Justices of the Peace.** In *Sobeys*, it was held that while **the Halifax City Court exercised jurisdiction over all contract actions originating within the city for sums not exceeding $80, its geographical reach was too confined.** Wilson J. rejected the argument that the jurisdiction of the Justices of the Peace over small claims for debt, when combined with the powers of the Halifax City Court, demonstrated a sufficient collective involvement by the inferior courts to meet the threshold test. However, in *Sobeys*, only contractual actions for unjust dismissal were at issue, and small claims in debt brought before a Justice of the Peace could not "be equated to jurisdiction over unjust dismissal", an action for unliquidated damages (at p. 267).

85 In the case at bar, **where jurisdiction over residential tenancy disputes is in question**, the evidence clearly shows that **small claims for rent could be heard by the Justices of the Peace throughout Nova Scotia in exercising their jurisdiction in debt. The Charter of the Halifax City Court gave it the power to determine most common law claims arising from the relationship of landlord and tenant**. While a dispute over unpaid rent is only one of many which can arise between a landlord and residential tenant, it is not merely speculative to suggest that these claims are advanced with some frequency. There is no evidence before this Court relating to the prevalence of these claims before 1867, or the proportion they represented of the total number of adjudicated disputes, but approximately 40 percent of the complaints which result in legal action under the current system in Nova Scotia are of this variety. Given the enduring nature of the landlord-tenant relationship, it is not fanciful to conclude that a similar percentage would have obtained before 1867.

...

> 103 **Moreover, the Act does not fundamentally change the leasehold and contractual nature of residential tenancies**. The Act does not substitute fundamentally new statutory duties for the principles of contract and property law. The lease still governs the rights and obligations of the parties. The lease is a contract. This contract defines and assigns the rights and obligations of the lessor and lessee, owner and fix-term occupant, two personae well known to property law. Disputes are still resolved by interpreting the lease and applying it to the evidence. The legislation simply ensures that certain terms which may or may not have been consensually reached by the parties to the lease are included as a matter of statute. Standardized statutory terms themselves have become well known to property and contract law.
>
> 104 It may also be noted that the vast majority of the terms imposed by the legislation here at issue would have been express or implied in leases of the 19th century: for example, the landlord is held responsible for keeping the premises in a "good state of repair", and the tenant is obliged to maintain the ordinary cleanliness of the interior. Some terms reflect relatively recent innovations of the common law -- for example, the obligation to mitigate upon abandonment -- but do not represent a doctrinal transmogrification; their incorporation simply mirrors incremental adjustments to the common law of leases. While the fact that the parties cannot contract out of these statutory conditions may represent an attempt to redress the imbalance of power inhering in the landlord-tenant relationship, this does not change the fact that the medium by which this is done is the traditional law of contract and lease. **The relationship of landlord to residential tenant continues to be based on property law and the law of contract and tort, whether it is expressed through the common law or in statutes.**
>
> [Emphasis added]

[31] In spite of these observations however, one must also appreciate her repeated references to “residential tenancy disputes”.[16] What was the extent of the jurisdiction that McLachlin considered was being transferred to the *RTA*

[16] Ibid paras. 70 - 71, 76, 81 - 85, 88, 92

authorities? Was there room for any residual or concurrent jurisdiction left for Superior Courts regarding “residential tenancy disputes”?

[32] McLachlin, J., like Lamer, C.J.C., seems to adopt a narrow characterization of what constitutes “residential tenancy disputes”[17]:

> 76 A few observations about how the test is applied may be appropriate at the outset. The first concerns the **characterization of the judicial power which is said to be removed** by its conferral on a provincially appointed body. **For the purposes of this characterization, the focus of the historical inquiry is on the type of dispute involved.** The function of the s. 96 courts was and is dispute resolution. **The question must therefore be whether an aspect of the dispute resolution function dominated by the superior courts has been transferred to an administrative tribunal. It follows that the inquiry must not focus on "a technical analysis of remedies"** (Sobeys, supra, at p. 255). Nor should it evaluate the nature and goals of the legislative scheme, which fall to be considered only at the third stage should it progress that far. There is no logical nexus between the policy concerns of modern legislation and the search for the historical antecedents of a given jurisdiction. **Rather, the focus must be on the "type of dispute" involved: the reviewing court must look to the "subject-matter rather than the apparatus of adjudication"**: Dupont v. Inglis, [1958] S.C.R. 535, at p. 543 per Rand J.; Sobeys, supra. **In this case, the focus must be on residential tenancy disputes.** [Emphasis added]
>
> [See also paras. 82 - 92]

(iii) The Effect of the 1981 *RTA* Reference Case

[17] Ibid para. 76 and 82 - 92

[33] This apparently narrow view, that the *RTA* is designed to resolve disputes between landlords and tenants arising from their statutory obligations, was also evident in the Supreme Court's earlier decision in *Reference re: Residential Tenancies Act* 1979 (Ontario). [18]

[34] There, Dickson, C.J.C. stated for the Court that the issues to be determined were[19]:

> 1. Is it within the legislative authority of the Legislative Assembly of Ontario to empower the Residential Tenancy Commission **to make an order evicting a tenant** as provided in The Residential Tenancies Act, 1979?
>
> 2. Is it within the legislative authority of the Legislative Assembly of Ontario as provided in The Residential Tenancies Act, 1979 to **empower the Residential Tenancy Commission to make orders requiring landlords and tenants to comply with obligations imposed under that Act?**

[35] He discussed the legislation with a view to understanding the rationale behind the new legislation. That understanding would then assist in identifying what did the Legislature intend by creating the legislation; and what would be the consequences of adopting a proposed interpretation?

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[18] [1981] 1 S.C.R. 714 ["1981 *RTA* Reference"] per Dickson, C.J.C.

[19] - Ibid p. 719

[36] He observed that[20]:

> On February 10, 1978 a Government Green Paper was released relating to policy options for continuing tenant protection. The Green Paper made reference to the very large number of Ontario citizens whose lives are governed in part by the law of landlord and tenant. From 1961 to 1971 the number of tenants grew by 70 per cent from 483,500 to 825,000. It was estimated that there were more than one million rental households in Ontario constituting about 36 per cent of all households.
>
> A reading of the Green Paper would suggest that at least three factors led to the establishment of the Residential Tenancy Commission. **First**, the legislature had removed the landlord's traditional right to employ 'self-help' remedies (i.e. repossession) and now required a landlord to apply for an order of eviction. **It was felt that the demands of this "new business" would clog an already overburdened court system.** A specialized Commission was seen as a convenient method for ensuring prompt and efficient resolution of landlord-tenant disputes. **A second major factor was the belief that the regular court system was too formal in structure for the resolution of landlord and tenant disputes; that such disputes could best be adjudicated in an informal, summary proceeding before a tribunal where individual complainants would feel less inhibited in presenting their own cases. Third**, the Green Paper saw the creation of a Tenancy Commission as a convenient method of consolidating functions which had previously been performed by different organizations. The new tribunal would be a centralized body which could provide authoritative advice to landlords and tenants. **By combining administrative functions with judicial functions, the tribunal would be able to offer a wider range of remedies to individuals than the regular court system.** The Paper noted that a while many had hailed the development of tenancy boards and tribunals as an effective means of realizing the rights embodied in the residential tenancy legislation, others had pointed out that such "rough justice" might run counter to well-established principles of procedure. The Green Paper recommended a "mediation-adjudication" approach under which authority to mediate would be combined with jurisdiction to adjudicate a dispute. In this approach, an official would listen to both sides of the case and attempt to guide the parties toward a mutually agreeable solution. **If agreement could not be reached, the official would convene a hearing with the parties present, hear evidence and arrive at a determination according to the law. The decision would be legally enforceable.**

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[20] - Ibid p. 726

> **The Residential Tenancies Act was enacted to implement the recommendations of the Green Paper**. As I have said, the Act set up **a new tribunal, the Residential Tenancy Commission, to oversee and enforce the obligations of landlords and tenants in Ontario**. **The tribunal is given wide-ranging powers and functions**. Some of these are purely administrative in nature, for example, the Commission is charged with the obligation of informing members of the public as to their rights under the legislation. **But by far the most significant role to be played is in the resolution of disputes between landlords and tenants. The mechanism for dispute resolution is triggered 'upon application' by either the landlord or the tenant.** In one or two circumstances the process is put in motion by application by a third party--e.g. a neighbouring tenant. [Emphasis added]

[37] He summarized the mandate of the Ontario Residential Tenancy Commission as contained in[21]:

> Section 84(1) of The Residential Tenancies Act, subject to certain exceptions, gives the Commission **"exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Act and as to any matter or thing in respect of which any power, authority or discretion is conferred upon the Commission"**. Section 116(1) permits the filing of a Commission order evicting a tenant in the County or District Court and states that such order once filed: "has the same force and effect and all proceedings may be taken on it, as if it were an order of that court, and the clerk of the court shall issue a writ of possession". [Emphasis added]

[38] Notably, although having adjudicative functions, the Ontario Act had monetary limits and provided limited powers[22]:

> **Moreover, the $3,000 limitation on jurisdiction only applies when a sum of money is being claimed;** in all other cases, there will be no pecuniary limit. Thus

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[21] - Ibid p. 737

[22] - Ibid p. 742

> a landlord may incur costs far in excess of $3,000 in order to 'comply' with the Act or with an order of the Commission.
>
> When confronted with a lis, the task of the Commission will be to determine the respective rights and obligations of the parties according to the terms of the legislation. **The Commission does not have an untrammelled discretion to 'set matters right'. The powers which it may invoke and the remedies which it may award are circumscribed by the terms of the Act.** At no point is the individual's right at law surrendered for the benefit of a common group or policy. The Commission deals exclusively with matters of contract and land law as they arise between landlords and tenants.

[39] Thus, although the Ontario Commission's "primary role is to adjudicate" and so exercises a judicial function, it does have jurisdictional limits as to remedies that the Superior Courts do not[23]:

> Section 81. The Commission shall,
>
> > (a) **perform the duties assigned to it by or under this Act** and shall administer this Act and the regulations;
> >
> > (b) periodically review this Act and the regulations and recommend from time to time amendments or revisions thereof:
> >
> > (c) advise and assist the public on all residential tenancy matters including referral where appropriate to social services and public housing agencies;
> >
> > (d) take an active role in ensuring that landlords and tenants are aware of the benefits and obligations established by this Act;

[23] - Ibid p. 746

> (e) periodically prepare and publish a summary of significant decisions of the Commission and the reasons therefor.
>
> **It appears upon reading the Act as a whole that the central function of the Commission is that of resolving disputes, in the final resort by a judicial form of hearing between landlords and tenants. The bulk of the Act is taken up with defining the rights and obligations of landlords and tenants and with prescribing a method for resolving disputes over those obligations.** Dispute resolution is achieved through application to the Commission. It is true that the Commission is granted the power to mediate the dispute before it is obliged to hold a hearing, but the Commission will ordinarily have no right or duty to act as mediator unless invited to do so by one of the parties. If one party does not wish to settle, then a judicial hearing must be held and a judgment rendered. [Emphasis added]
>
> Per Dickson, C.J.C..

(iv) Conclusions Regarding the 1981 and 1996 Reference Cases

[40] I remain mindful that the *1996 RTA Reference* was operating within the analytical framework established in the *Reference re: Residential Tenancies Act* 1979 (Ontario):[24]

> 30 In the seminal s. 96 case – *Re Residential Tenancies Act*, 1979, supra, at pp. 734 - 36 - Dickson J., as he then was, set out the factors which should be considered in assessing the constitutionality of a provincial grant of jurisdiction. Laskin C.J. conveniently summarized these factors in *Massey-Ferguson Industries Ltd*. v. Saskatchewan, []1981] 2 S.C.R. 413, at p. 429:

[24] 1996 *RTA Reference* per Lamer C.J.C. at para. 30

> 1. Does the challenged power or jurisdiction broadly conform to the power or jurisdiction exercised by Superior, District or County Courts at the time of Confederation?
>
> 2. Is the function of the provincial tribunal within its institutional setting a judicial function, considered from the point of view of the nature of the question which the tribunal is called upon to decide or, to put in other words, is the tribunal concerned with a private dispute which it is called upon to adjudicate through the application of a recognized body of rules and in a manner consistent with fairness and impartiality?
>
> 3. If the power or jurisdiction of the provincial tribunal is exercised in a judicial manner, does its function as a whole in its entire institutional context violate s. 96?
>
> These three steps of the *Re Residential Tenancies Act*, 1979 case were applied in *Grondin, supra,* and were refined by this court in *Sobeys Stores* and *Reference re Young Offenders Act, supra.* The s. 96 jurisprudence was most recently discussed in *MacMillan Bloedel.*

[41] The Majority in the *1996 RTA Reference* found that the Superior Courts did not enjoy exclusive jurisdiction over residential tenancy disputes at the time of Confederation [step 1] and, therefore, the conferral of such powers in the *RTA* was valid and not a violation of s. 96 of the *Constitution Act* 1867.

[42] Notably, the Supreme Court's arguably narrow interpretation of the *Ontario Act* must be understood in the context of the Ontario legislation which has monetary limits and reads more narrowly than the Nova Scotia legislation in any event. Moreover, Ontario's distribution of jurisdiction for residential tenancy

disputes historically is also different. To that extent the *1981 RTA Reference* is less helpful in the case at Bar.

[43] Nevertheless, having found that the Superior courts had some measure of concurrent jurisdiction over residential tenancy disputes at the time of Confederation, the question of what jurisdiction remained vested in the Superior Courts of Nova Scotia was not clearly and explicitly answered in the *1996 RTA Reference*.

<u>The Nova Scotia Legislation in issue</u> - a closer analysis of the meaning of the text, the intention of the legislature and the consequences of adopting Oickle's proposed interpretation.

[44] A good starting point is a review of the language of the RTA itself. Section 3(1):

> Notwithstanding any agreement, declaration, waiver, or statement to the contrary, this Act applies when the relation of landlord and tenant exists between a person and an individual in respect of residential premises.

[45] Further clarity comes from Section 25 which reads:

> This Act governs all landlords and tenants to whom this Act applies in respect of residential premises.

[46] Section 13(1) of the RTA, entitled "Application to the Director", makes it clear that the Director has the exclusive authority (at first instance) with respect to matters arising under the RTA:

> Where a person applies to the Director
>
> (a) to determine a question arising under this Act; or
>
> (b) alleging a breach of a lease in contravention under this Act,
>
> and, not more than one year after the termination of the lease, files with the Director an application… **the Director is the exclusive authority, at first instance, to investigate and endeavor to mediate a settlement**.
>
> [emphasis added]

[47] In executing its role the Director has the authority to make a range of sweeping orders including[25]:

> …

[25]See RTA s. 17A for a complete list

> (c) require the landlord or tenant to make any repair or take any action to remedy a breach, and require the landlord or tenant to pay any reasonable expenses associated with the repair or action;
>
> (d) order compensation to be paid for any loss that has been suffered or will be suffered as a direct result by the breach;
>
> …
>
> (h) require the payment of money by the landlord or tenant

[48] As noted in Ms Oickle's materials there are no monetary limits to the quantum of **compensation** that can be ordered. In considering the legislative intent with respect to the RTA it is noteworthy that if a party wishes to appeal the decision of the Director to Small Claims Court, the $25,000 monetary limit on the jurisdiction of that Court does not apply[26]. This, supports the notion that the Legislature was prepared to recognize and empower the Director to hear and decide claims that would result in unlimited monetary awards.

[49] In Ontario, there is a cap on the maximum amount that the Residential Tenancies Board may award. If the claimed amount exceeds the Board's monetary jurisdiction, the person may then commence their claim in a court of competent jurisdiction. Section 207 of the *Residential Tenancies Act*[27] provides:

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[26] *Small Claims Court Act*, R.S.N.S. 1989, c. 430 s. 9(2)

[27] *Residential Tenancies Act*, 2006, S.O, 2006, c. 17

Monetary jurisdiction of Board

207. (1) The Board may, where it otherwise has the jurisdiction, order the payment to any given person of an amount of money up to the greater of $10,000 and the monetary jurisdiction of the Small Claims Court [currently $25,000] [28]

(2) A person entitled to apply under this Act but whose claim exceeds the Board's monetary jurisdiction may commence a proceeding in any court of competent jurisdiction for an order requiring the payment of that sum and, if such a proceeding is commenced, the court may exercise any powers that the Board could have exercised if the proceeding had been before the Board and within its monetary jurisdiction.

[50] The procedure in Ontario seems to be more consistent with Lamer C.J.'s comments in the *1996 RTA Reference* case where he wrote that the "hallmarks" of residential tenancy disputes were that they tended to be disputes involving minor matters and minor dollar amounts.

[51] However, later in his judgment, Lamer, C.J. takes note of the fact that in 1864 (in Nova Scotia) a single Justice of the Peace could hear claims in debt for rent up to $20 while two Justices could hear claims up to $80[29]:

As the appellant points out this was not a trivial jurisdiction:

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[28] *Courts of Justice Act, O. Reg. 626/00, s. 1(1)*

[29] *1996 Reference Case, supra,* at para. 61

> In the 1860's, $80 was a significant sum. It would pay two years' wages for a farmhand or domestic servant ... In Halifax ... [the city courts'] jurisdiction would have left few landlord/tenant matters out of the reach of the city court.

[52] The Ontario Court of Appeal affirmed the exclusive nature of the Rental Housing Tribunal's [Landlord and Tenant Board] jurisdiction where the statute provides for matters to be heard exclusively before it. In *Fraser v. Beach*[30] the Court canvassed whether The Tenant Protection Act unequivocally indicated the Legislature's intention to limit the superior court's jurisdiction to make an order evicting a residential tenant:

> 8 The court's jurisdiction, however, is not fixed. It has long been settled that the jurisdiction of a superior court may be limited by statute. In Board v. Board (1919), 48 D.L.R. 13, at p. 18, Viscount Haldane in reviewing cases dating as far back as 1774, said that "nothing shall be intended to be out of the jurisdiction of a superior court, but that which specially appears to be so." In Re Michie Estate and City of Toronto et al., [1968] 1 O.R. 266 at p. 268, Stark J. wrote that "... the Supreme Court of Ontario has broad universal jurisdiction over all matters of substantive law unless the Legislature divests from this universal jurisdiction by legislation in unequivocal terms." Brooke J.A. speaking for this Court in 80 Wellesley St. East Limited v. Fundy Bay Builders Ltd., [1972] 2 O.R. 280 stated at page 282, "As a superior court of general jurisdiction, the Supreme Court of Ontario has all the powers that are necessary to do justice between the parties. Except where provided specifically to the contrary, the court's jurisdiction is unlimited and unrestricted in substantive law in civil matters."

[30](2005) 75 O.R. (3d) 383, [2005] O.J. No, 1722 ["Beach"]. I note section 4 of the Nova Scotia RTA, specifically exempts the application to "residential premises" of the *Overholding Tenants Act* and *Tenancies and Distress for Rent Act*.

[53] Given the clear language of the Ontario Act with respect to the termination of tenancies, the Court found that the Tribunal had the **exclusive** jurisdiction to determine all applications of eviction. Juriansz, JA held:[31]

> "I am satisfied that the combined effect of these provisions is to oust the jurisdiction of the Superior Court to make an order requiring the tenants to vacate the premises. The statute clearly provides that only the Tribunal may make an order terminating a tenancy and evicting a tenant.

[54] This approach reinforces Justice Binnie's words in *TeleZone Supreme Court*, that where the language of the RTA is clear, and 'ousts' the jurisdiction of the Court, it should be given effect.

[55] Such an approach also recognizes that while there may have been some concurrent jurisdiction pre-Confederation between inferior and superior courts, the resolution of residential tenancy disputes was not a 'core' jurisdiction protected by Section 96. In fact, Lamer C.J., in the *1981 RTA Reference case*, remarked that:[32]

> Notwithstanding the importance of s.96 in its institutional context (i.e. the protection of the independence and the "core" jurisdiction of superior courts) …a flexible approach has been adopted in determining when judicial power may be transferred to inferior courts and tribunals.

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[31] Ibid at para. 15

[32] Ibid at para. 27

[56] Moreover, Lamer, CJ re-iterates that jurisdiction over residential tenancies disputes is not part of the 'core' jurisdiction which our s.96 jurisprudence protects[33]:

> The "core jurisdiction is a very narrow one which includes only critically important jurisdictions which are essential to the existence of a superior court of inherent jurisdiction and to the preservation of its foundational role within our legal system."

[57] Similar comments are made by McLachlin, J. (as she then was) writing for the Majority in the *1996 RTA Reference* case:[34]

> [what is **not** permitted is] "[s]hadow courts and tribunals usurping the functions of superior courts guaranteed by s. 96..."

[58] As Binnie, J, stated, writing for the Court in *TeleZone Supreme Court:*[35]

> It is true that apart from constitutional limitations, Parliament may by statute transfer jurisdiction from the superior courts to other adjudicative bodies including the Federal Court. It did so, for example, with respect to the judicial review of federal decision makers: Canada Labour Relations Board v. Paul L'Anglais Inc., [1983] 1 S.C.R. 147, at p. 154. However, the onus lies here on the Attorney General [the party alleging the transferred s. 96 jurisdiction to a statutory created body] to establish the existence and extent of such a transfer of jurisdiction in statutory terms that are **clear, explicit and unambiguous**. [emphasis added]

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[33] - Ibid at para. 56

[34] Ibid at para. 73

[35] [2010] S.C.J. No. 62 at para. 45 and 42

[and...]

> **…any derogation from the jurisdiction of the provincial superior courts** (in favour of the Federal Court or otherwise) **requires clear and explicit statutory language:** "[The] ouster of jurisdiction from the provincial superior courts in favour of vesting exclusive jurisdiction in a statutory court ... requires **clear and explicit statutory wording to this effect,**

[59] By extension, if residential tenancies were not a “core function” that is protected by s.96, then it would seem to be open for the Legislature to have intended to transfer the **exclusive** decision-making authority in this area to the RTA authorities.

[60] In *TeleZone Inc. v. Canada (Attorney General)* the Ontario Court of Appeal notes that there have been various instances where the court has 'lost' its jurisdiction as a result of legislation:[36]

> Other recent examples, of cases in which the jurisdiction of the Superior Court was ousted as the result of the provisions of a statute are as follows:
>
> (1) Fraser v. Beach (2005), 75 O.R. (3d) 383 (C.A.). The Tenant Protection Act, 1997, S.O. 1997, c. 24, expressly takes away the jurisdiction of the Superior Court to order a tenant to vacate a rental premises.

[36] [2008] O.J. No. 5291 (C.A.) [“TeleZone Appeal”] - at para. 13

> (2) Liberty Mutual Insurance Co. v. Fernandes (2006), 82 O.R. (3d) 524 (C.A.). Provisions of the Insurance Act, R.S.O. 1990, c. I.8, remove the jurisdiction of the Superior Court to determine whether an insured person sustained catastrophic impairment as the result of a motor vehicle accident.
>
> (3) Beiko v. Hotel Dieu Hospital St. Catharines, [2007] O.J. No. 4785, 2007 ONCA 860 CanLII. The Public Hospitals Act R.S.O. 1990, c. P-40 ousts the jurisdiction of the Superior Court to determine whether a hospital can reduce a doctor's operating room allocation.

[61] While *TeleZone* is largely a case concerning a dispute in respect of the jurisdiction of competing courts (i.e. Federal Court vs. Superior Court) the Ontario Court of Appeal found an analysis of the labour context helpful. The Court looked to the case of *Weber v. Ontario Hydro* [1995] 2 S.C.R. 929, which the Court writes:[37]

> …is an example of a case in which the Superior Court had jurisdiction over the plaintiff's claim, but the jurisdiction was ousted by s.45(1) of the Labour Relations Act, R.S.O. 1990, c. L.2 which provides that "all differences between parties arising from the interpretation, application, administration or alleged violation of [a collective] agreement" must be resolved by arbitration.

[62] In *Weber*, McLachlin, J., (as she then was) writing for the Majority held:

> Where the dispute, regardless of how it may be characterized legally, arises under the collective agreement, then the jurisdiction to resolve it lies exclusively with the labour tribunal and the courts cannot try it.

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[37] *TeleZone Appeal, supra,* at para. 9

[63] In *TeleZone*, the Ontario Court of Appeal finds that McLachlin's comments in *Weber* suggest that, "to allow concurrent jurisdiction in the courts would be to undermine the purpose of the legislation".[38]

[64] Importantly, what these cases highlight is that (in the labour context) where the "essential character" of the matter arises from the collective agreement then exclusive jurisdiction lies with the labour relations board/arbitrator.

[65] The general test for assessing the "essential character" of a dispute between parties was articulated by Binnie, J. in *Goudie v. Ottawa (City)*:[39]

> Subsequent cases have confirmed that if the dispute between the parties in its "essential character" arises from the interpretation, application, administration or violation of the collective agreement, it is to be determined by an arbitrator appointed in accordance with the collective agreement, and not by the courts.

[66] A three-step "essential character test" was provided by Goudge, JA. of the Ontario Court of Appeal in *Gaignard v. Canada (Attorney General)*:[40]

> [16] First, as McLachlin J. said in Weber, at p. 955 S.C.R., one must look to the facts giving rise to the dispute rather than the legal characterization of the wrong

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[38] *TeleZone Appeal*, *supra*, at para. 9

[39] 2003 SCC 14, 223 D.L.R. (4th) 395 at para. 23

[40] (2003), 67 O.R. (3d) 611 (C.A.)

> said to be manifested by those facts. The facts must engage the rights and obligations in the collective agreement in order to be arbitrated.
>
> [17] The second consideration is the corollary of the first, namely (in the language of McLachlin J., at p. 956 S.C.R. of Weber), the ambit of the collective agreement. The language chosen by the parties must clearly create rights and obligations that extend to these facts, either expressly or by implication.
>
> [18] The third consideration is whether the arbitration process provided by the collective agreement can furnish an effective remedy for the dispute. The remedy need not be identical to that which the court would provide, but it must be responsive to the wrong complained of. The arbitration process does not acquire exclusive jurisdiction if the result is a real deprivation of any ultimate remedy.

[67] I would suggest that a similar analysis is appropriate in the residential tenancies context. First, it is important to discern whether the parties are in a landlord-tenant relationship. Second, one must consider the matter in dispute between the parties. Regardless of how the parties characterize the 'legal wrong', do the facts fall within the ambit of matters covered by the *RTA*? At this stage one considers both statutorily mandated requirements (e.g. s.9 of the *RTA*) and any other rights/obligations that the parties have agreed to under the lease agreement. Third, can a proceeding under the *RTA* furnish an effective remedy for the parties? If not, then such would be an instance where a Superior Court would have residual jurisdiction.

[68] If the circumstances of an alleged residential tenancy dispute satisfy the above three criteria of the "essential character test", then the Director has the exclusive authority to hear the matter, at first instance.[41]

[69] While not binding on me, I note that Service Nova Scotia and Municipal Relations has publicly made available on its website "sample" decisions of the Director of Residential Tenancies. In one such case, the Director took jurisdiction [File No. 2007 00828 - attached hereto as Appendix "A"] to investigate and adjudicate upon a $19,160.58 claim by a landlord for fire damage to premises [insured value of and payout of $52,500] based on a claim of negligence.

[70] It appears that Oickle's preferred interpretation[42] is consistent with the language of the *RTA* itself, the apparent purpose of the legislation, the history of legislation and legislative context, the historical jurisdiction of courts and the consequences of her interpretation accord with the comments of the Supreme Court of Canada in the *1996 RTA Reference*.

[41] Based on the language of exclusivity found in section 13 of the RTA

[42] I keep in mind the *Interpretation Act* RSNS, 1989 c. 236, especially s. 9

What does the Plaintiff Corfu propose is the flaw in Oickle's position?

[71] Corfu argues that this Court still has concurrent jurisdiction over **all** residential tenancy disputes, and that **until** an application is made by a party to the *RTA* authorities, this Court can take jurisdiction, in spite of the reference in the *RTA* to "exclusive" authority at first instance.

[72] In support of this position Corfu offers:

a) Four cases which it says establish that this Court maintains concurrent jurisdiction in the case at Bar:

- *Keeping v. Gerrard* (1986), 75 N.S.R. (2d) 168 (Co. Ct.)

- *Benjamin v. Pottie* (1999), 134 N.S.R. (2d) 353 (S.C.)

- *Gaul v. King* (1979) 33 NSR (2d) 60 (CA)

- *Leslie v. S & B Apartment Holding Ltd*, 2011 NSSC 48;

b) That McLachlin, J. (as she then was) in the *1996 RTA Reference* (at para. 92) noted that in Nova Scotia this Court exercised a concurrent jurisdiction with inferior costs "over tenancy disputes";

c) The fact that the *RTA* contains no monetary limit strongly suggests that the legislature did not intend to oust this court's jurisdiction to "hear a claim for damages for breach of lease".[43]

d) That Oickle may be (as pleaded by Corfu) found liable under the common law vicarious liability principles, and this basis of liability being judge-made must be resolved in Courts and therefore, to that extent at least, this action should proceed against Oickle.

e) That Oickle has "attorned" to this Court's jurisdiction by filing a Defence herein.[44]

[73] I will now address each of these arguments.

[74] I note that in her Defence, Oickle specifically pleaded:[45]

10. The Defendant pleads the *Residential Tenancies Act*, R.S., c. 401, in its entirety.

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[43] Corfu's brief para. 34

[44] Ibid paras. 36 - 45

[45] At the oral hearing Oickle argued that she did not attorn

> 11. The Defendant says that all material times the Plaintiff and Defendant were in a landlord-tenant relationship within the meaning of s. 3 of the *Residential Tenancies Act*, R.S., c. 401.
>
> 12. The Defendant says that the Director and/or Board of Residential Tenancies have exclusive jurisdiction at first instance to determine residential tenancy disputes, including the claim made by the Plaintiff in these proceedings.
>
> 13. The Defendant says that the Supreme Court of Nova Scotia does not have the jurisdiction, power, or authority to determine a residential tenancy dispute at first instance, including the claim made by Plaintiff in these proceedings.

[75] I find that Oickle has not attorned to the jurisdiction of this Court. I say this because, while I found Justice LeBlanc's decision in *Waterbury Newton v. Lantz* 2010 NSSC 359 helpful, the case at Bar is distinguishable because:

> (i) In *Lantz*, Newton, who had pleaded the Court did not have jurisdiction because the parties had agreed to resolve disputes by arbitration, "also took fresh steps to advance the proceeding by producing a list of documents, providing additional documents and agreeing to dates for his discovery .... [which included] steps after filing the Defence that were inconsistent with the view that the Court did not have jurisdiction".
>
> (ii) In *Lantz*, the parties allegedly contracted out of the Court process, which is not comparable to Corfu's claim here, in relation to which I have concluded **at law** this Court cannot take jurisdiction.

[76] In *Keeping* Judge Palmeteer did not have the benefit of the *1996 RTA Reference*, and he was assessing the predecessor legislation. The only cases to follow, or even cite, *Keeping* are Judge Palmeteer's later decision in *Hansen v. Jones* (1990) 170 N.S.R. (2d) 4, and Justice Goodfellow's decision in *Benjamin v. Pottie* (1994), 134 N.S.R. (2d) 353:

[77] In *Benjamin*, Justice Goodfellow did no independent analysis of his own, and cited only *Keeping* as authority for his jurisdiction to hear the residential tenancy dispute in that case. *Benjamin* has not been judicially considered to this day and was also considering the predecessor *RTA.*

[78] *Gaul v. King* (1979), 33 N.S.R. (2d) 60 (CA) is distinguishable. In *Gaul*, the matter in dispute was a negligence claim based on the failure to comply with duties imposed, in common law and by the statutory conditions applicable to a residential lease pursuant to the *Residential Tenancy Act*, SNS 1970 c. 13 (in force August 1, 1970). The incident occurred on April 29, 1976 and at that time the *Act* did not contain any reference to "exclusive" jurisdiction and, in fact, allowed for an inferior court, the Provincial Magistrates Court, to hear matters under s. 10. Thus, it is no surprise that the Superior Court continued to hear cases arising out of residential tenancy matters as it still shared jurisdiction on those matters.

[79] *Leslie v. S & B Apartment Holdings Ltd*, 2011 NSSC 48, involved a tort claim for injuries tenants suffered when they had to jump off a three-storey apartment building to avoid a fire that was caused by the landlord's negligence.

The issue, whether the *RTA* barred such action, was not raised, not argued, and thus not decided by the Judge. I note the landlord conceded it owed a duty of care to the Plaintiffs - para. 33. The Judge found a duty of care existed at common law and pursuant to the statutory conditions in the *RTA.* The National Fire Code of Canada also imposed obligations on the landlord.

[80] Collectively, the Judge found that the landlord's "conduct created an unreasonable risk of harm in the event of a fire" - para. 37.

[81] Given those circumstances, I do not find the reasoning in *Leslie* to be of any assistance to me in deciding the specific issue in the case at Bar.

[82] The Nova Scotia Supreme Court had some concurrent jurisdiction over residential tenancy matters at the time of Confederation. [46] It is evident to me from the Supreme Court's comments, and the other considerations earlier cited herein, that any residual jurisdiction that would be otherwise concurrent with that the *RTA* authorities, has been exclusively vested with the *RTA* authorities. The lack of a maximum monetary limit in the *RTA* does not further the Plaintiff's position; it

[46] (Para. 92, *1996 RTA Reference*)

tends to be consistent with the other relevant considerations and supports the Defendants' position.

[83] I find that, to the extent that Corfu could have proceeded against Oickle in this Court, based on a common law vicarious liability basis, such concern is effectively accounted for in the *RTA* statutory condition no. 4, and therefore, this Court has no jurisdiction to hear a claim on that basis in these circumstances.

Conclusion

[84] After reviewing the legislation and authority carefully, I am driven to conclude that Oickle's preferred interpretation of the *RTA* is correct in law.

[85] I therefore further conclude that Oickle has demonstrated that, as contemplated by *CPR* 13.03, it is "plain and obvious" that the pleadings of the Plaintiff herein are based on a claim (of a cause of action) in the exclusive jurisdiction of the *RTA* authorities, and I therefore allow the motion for summary judgment, set aside the statement of claim and dismiss the proceeding.

[86] As to costs, I will request the parties to attempt to resolve that issue; failing agreement I will accept written submissions no later than April 15, 2011.

J.