

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *O'Neil v. O'Neil*, 2026 NSSC 39

**Date:** 20260202

**Docket:** Ant SAT No. 545329

**Registry:** Antigonish

**Between:**

Adrian Ignatius O'Neil

*Plaintiff*

v.

James Ignatius O'Neil, Raymond Gerard O'Neil, Lawrence Ignatius O'Neil and  
Moira Elizabeth Dowling

*Defendants*

<b>DECISION ON SUMMARY JUDGMENT ON EVIDENCE</b>
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**Judge:** The Honourable Justice Scott C. Norton

**Heard:** January 23, 2026, in Halifax, Nova Scotia

**Decision:** February 2, 2026

**Counsel:** Adrian O'Neil, self-represented Plaintiff  
Justin E. Adams, for the Defendants, James O'Neil and Raymond O'Neil  
Bejamin P. Carver and Jeffrey D. Waugh, for the Defendants, Lawrence  
O'Neil and Moira Dowling

**By the Court:**

**Introduction**

[1] The defendants move for summary judgment on evidence and an order dismissing the proceedings against them on grounds that the plaintiff's claim is barred by the passage of time and that the plaintiff has no standing to make the claim against them.

[2] Because all parties share their last name, for clarity and with no disrespect intended, I shall refer to them by their first name.

**Background**

[3] The parties are siblings and the children of the late Sarah Elizabeth O'Neil DeCoste ("Sarah").

[4] This proceeding was commenced by Adrian as a Notice of Application in Court filed July 25, 2025. At the motion for directions held on November 5, 2025, I determined that it was appropriate to convert the proceeding to an action under *Civil Procedure Rules* 5.15 and 6.03.

[5] In the underlying proceeding, Adrian seeks a declaration that the defendants exercised undue influence over their mother in connection with the transfer of real property located at 339 Murray Street, Mulgrave, Nova Scotia (the "Property"), thereby rendering the transfer void or voidable, and an order setting aside the transfer or, alternatively, an order for monetary compensation for the fair market value of the property.

[6] The defendants are separately represented, James and Raymond by one counsel, and Lawrence and Moira by separate counsel. They have each filed motions for summary judgment on evidence. Both motions allege that the claim was filed after the passage of the two-year limitation period under the *Limitation of Actions Act*, SNS 2014, c. 35 ("LAA"). James and Raymond also alleged that Adrian has no standing to bring the action.

[7] The following material facts are not in dispute:

- (a) Sarah, their mother, was the sole registered owner of the Property.

- (b) On December 12, 2014, Sarah executed a deed transferring title in the property to Raymond's son, James. The title records reflect a life interest to Raymond with the remainder interest vested in James.
- (c) The subject deed was registered on January 13, 2015, thereby making the transfer a matter of public record.
- (d) The plaintiff attests in an affidavit filed in this proceeding and sworn on September 2, 2025, that:
  - 2. In or about the fall of 2015, while visiting my mother, Sarah Elizabeth O'Neil DeCoste, at Sydney Hospital, I was approached by Justice Lawrence Ignatius O'Neil ("Justice Lawrence O'Neil").
  - 3. Justice Lawrence O'Neil requested to speak to me privately, and I agreed to have this conversation.
  - 4. During that private conversation, Justice Lawrence O'Neil informed me that the family home located at 339 Murray Street, Mulgrave, Nova Scotia, had been transferred to Raymond Gerard O'Neil.
  - 5. Justice Lawrence O'Neil further stated that he personally ensured that Raymond Gerard O'Neil would receive the property, describing that he wanted to make sure Raymond had a place to "get away from his wife".
- (e) Sarah made a Will in 2008 that granted Philip a life interest in the Property with the remainder to Adrian. This Will was replaced by a Will in 2021 that did not contain that grant. Adrian is named as Executor in the 2021 Will and filed this Will with the Probate Court.

## Issues

- [8] The issues to be determined on this motion are:
- 1. Should that action be dismissed on the basis that the plaintiff's claims are statute barred?
  - 2. Should the action be summarily dismissed on the basis that the plaintiff has no standing to bring the claim?

## Law

[9] I recently had occasion to review the law on summary judgment in the context of a claim that an action was statute barred in *Lohnes v. Kohltech International Limited*, 2026 NSSC 28, at paras. 9-12:

[9] Under the LAA, the claimant has the burden of proving that the pleading was brought within two years from the day on which the claim is “discovered” [Section 9(1)].

[10] In *Nova Scotia Home for Coloured Children v. Milbury*, 2007 NSCA 52, the Court of Appeal described the approach to summary judgment on the evidence in the context of a limitations defence, based on the former *Limitation of Actions Act*, which was in effect at the time. At paras. 20 and 23-24:

[20] Did the defendants establish that there are no genuine issues of fact on the question of whether the plaintiff’s 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: ...

[24] In the context of a summary judgment application where a limitation defence is pleaded, the defendant applicant must first establish that there is no genuine issue of fact for trial. In this case the defendants have established that the statutory limitation period has long expired. Unless the discoverability principle applies, the defendants satisfied the first part of the summary judgment test on the facts alleged by the plaintiff, that is, that the wrongs were committed at the latest in 1947, and that the longest limitation period, six years, expired in 1972, six years after the plaintiff reached the age of majority in 1966. Since the defendants have met the initial threshold, the plaintiff has to demonstrate that there is a real chance of success by presenting evidence that the limitation period has not expired, because of the discoverability principle.

[Emphasis added]

[11] The LAA prescribes the timeframe in which a person may bring a claim in Nova Scotia. Section 8(1)(a) sets a basic limitation period of two years from the date a claim is “discovered”:

8 (1) Unless otherwise provided in this Act, a claim may not be brought after the earlier of

- (a) two years from the day on which the claim is discovered; and
- (b) fifteen years from the day on which the act or omission on which the claim is based occurred.

[12] The LAA further sets out the test for when a claim is “discovered” for the purposes of a limitation period:

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.

[10] Further, as recently stated by the Court of Appeal in *Peill v. Soil and Sea Co-op Limited*, 2025 NSCA 11, at para. 26:

[26] Before addressing the appellants' argument, it is important to provide clarification regarding the test to be applied to a summary judgment motion where a limitations issue is raised. There has been some suggestion that this Court's decision in *Shannex* has supplanted or modified the two-step analysis in *Milbury*. That is not the case.

[27] *Shannex* was not a limitations matter. The principles outlined therein did not modify *Milbury* in anyway. The motion judge was correct to consider *Shannex* when assessing if there was a genuine issue of material fact regarding whether Edward's share had been lawfully revoked. However, it was the principles in *Milbury* that governed her consideration of whether there was a genuine issue of material fact regarding the expiry of the limitation period.

### **Analysis**

[11] Following the direction of the Court of Appeal in *Milbury*, here the defendants have established that the family home was conveyed to Raymond by a deed dated December 12, 2014, and registered January 13, 2015. As such, the limitation period for a claim based on this transfer of title has long expired subject to the issue of discoverability.

[12] The burden shifts to the plaintiff to demonstrate that there is a real chance of success by presenting evidence that the limitation period has not expired, because of the discoverability principle. There is no genuine issue of material fact that the plaintiff learned of the conveyance in the fall of 2015. To the extent that the plaintiff is alleging that the conveyance was improper he was on notice of the potential claim by that date but took no steps to file a legal process until approximately 10 years later.

[13] It is noteworthy that the issue of discoverability relates to the knowledge of there being an injury, loss, or damage. Here, the loss is the transfer of the family home. Applying the statutory definition for when discovery occurs in s. 8(2)(a) to

(d) of the LAA to the facts here: Adrian O’Neil knew or ought to have known by the fall of 2015 that:

- (a) Title to the family home was transferred to Raymond and James.
- (b) The transfer was caused or contributed to by the signing and registration of the deed.
- (c) Lawrence arranged the signing and registration of the deed.
- (d) The transfer of the family home was sufficiently serious to warrant a proceeding.

[14] The plaintiff argues that he could not have discovered his claim until April 5, 2024, when he first saw the 2008 Will. He says that the 2008 Will (which was replaced by the 2021 Will that was probated) granted him a life interest in the family home and that only then did he realize the transfer in 2015 deprived him of that interest. The 2021 Will does not contain a grant of the Property to anyone, presumably because the Property was transferred in 2015.

[15] This argument confuses knowledge of legal entitlement with knowledge of material facts. Limitation periods begin to run when the plaintiff knows the facts on which a plausible cause of action is based, not when he grasps the specific legal consequences or discovers additional evidence that might strengthen the claim.

[16] In *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31, the court stated the approach to determining whether a claim was “discovered” as follows, at para. 42:

**42** ... I propose the following approach instead: a claim is discovered when a plaintiff has knowledge, actual or constructive, of the material facts upon which a plausible inference of liability on the defendant’s part can be drawn. ...

**43** By way of explanation, the material facts that must be actually or constructively known are generally set out in the limitation statute. Here, they are listed in s. 5(2)(a) to (c). Pursuant to s. 5(2), a claim is discovered when the plaintiff has actual or constructive knowledge that: (a) the injury, loss or damage occurred; (b) the injury loss or damage was caused by or contributed to by an act or omission; and (c) the act or omission was that of the defendant. This list is cumulative, not disjunctive. For instance, knowledge of a loss, without more, is insufficient to trigger the limitation period.

**44** In assessing the plaintiff’s state of knowledge, both direct and circumstantial evidence can be used. Moreover, a plaintiff will have constructive knowledge when the evidence shows that the plaintiff ought to have discovered the material facts by exercising reasonable diligence. Suspicion may trigger that exercise

(*Crombie Property Holdings Ltd. v. McColl-Frontenac Inc.*, 2017 ONCA 16, 406 D.L.R. (4th) 252, at para. 42).

45 Finally, the governing standard requires the plaintiff to be able to draw a plausible inference of liability on the part of the defendant from the material facts that are actually or constructively known. In this particular context, determining whether a plausible inference of liability can be drawn from the material facts that are known is the same assessment as determining whether a plaintiff “had all of the material facts necessary to determine that [it] had prima facie grounds for inferring [liability on the part of the defendant]” (*Brown v. Wahl*, 2015 ONCA 778, 128 O.R. (3d) 583, at para. 7; see also para. 8, quoting *Lawless v. Anderson*, 2011 ONCA 102, 276 O.A.C. 75, at para. 30). Although the question in both circumstances is whether the plaintiff’s knowledge of the material facts gives rise to an inference that the defendant is liable, I prefer to use the term plausible inference because in civil litigation, there does not appear to be a universal definition of what qualifies as *prima facie* grounds. ...

[17] The plaintiff’s retrospective belief that he might have received the home under an earlier Will does not alter the fact that by the fall of 2015 he knew the home had been transferred to Raymond and James. Further, the directions in the 2008 Will could only take effect upon Sarah’s death and only if it remained the operative Will and the asset continued to form part of her estate. Neither condition was met. The 2008 Will was replaced by a Will executed in 2021 and filed as the operative Will with the Probate Court. The home was conveyed in 2015.

[18] I am satisfied that by the fall of 2015 the plaintiff had sufficient knowledge of the core facts to draw a plausible inference of liability and was therefor discovered in the fall of 2015. The plaintiff has failed to demonstrate a real chance of success to avoid the limitation period bar.

## **Conclusion**

[19] I grant the defendants’ motions for summary judgment and dismiss the plaintiff’s claim.

[20] In the circumstances, it is unnecessary to consider the issue of whether the plaintiff has standing.

[21] The defendants requested to be heard on the issue of costs following my decision. I will accept written submissions from the defendants within two weeks of this decision of not more than five pages in length, with case names or other authorities hyperlinked or by electronic copy of books of authorities. The plaintiff

shall have two weeks from receipt of the defendants' briefs to file a written response subject to the same restrictions.

Norton, J.