SUPREME COURT OF NOVA SCOTIA

Citation: *Sampson v. TD Insurance Meloche Monnex*, 2025 NSSC 19

Date: 20250117
Docket: *Pic* No. 524687
Registry: Pictou

Between:

Christopher Sampson

Plaintiff

v.

TD Insurance Meloche Monnex, TD Assurance Meloche Monnex, Enterprise Rent-A-Car Canada Company, LeCompagine De Location D'Autos Enterprise Canada, Rebecca Benvie, Cape Breton Regional Municipality, Cape Breton Regional Police Service and Gary Fraser

Defendants

DECISION

Judge: The Honourable Justice Peter P. Rosinski

Heard: September 16 and 17, 2024 in Pictou, Nova Scotia

Counsel: Jason T. Cooke, KC and Sarah MacLeod for Christopher Sampson
Ian Parker for TD Insurance Meloche Monnex and TD Assurance Meloche Monnex
Amy MacGregor for Enterprise Rent-A-Car Canada Company and Rebecca Benvie
Shawn Harmon for Cape Breton Regional Municipality and Cape Breton Regional Police Service
Andrea Rizzato for Gary Fraser

By the Court:

Introduction

[1] Christopher Sampson ("Chris") did not return a rental car after he knew that his insurer, TD Insurance Meloche Monnex ("TD") had discontinued paying for its use by him as of **September 29, 2020**, and he himself refused to pay for its further use.

[2] He was prompted to action when he became aware that Enterprise Rent a Car ("Enterprise") finally reported it as "stolen" to the Cape Breton Regional Police Service ("the Police Service") on **October 22, 2020**.

[3] The alleged theft by Chris was investigated by Constable Gary Fraser ("Gary") of the Police Service.

[4] On **October 28, 2020**, while Chris was returning the vehicle to the Enterprise location in Sydney, Cape Breton, where he had initially rented it, the Police Service received a 911 call from an employee of Enterprise (Rebecca Benvie) which gave rise to members of the Police Service attending, and Gary arresting Chris for breach of the peace and causing a disturbance.[1]

[5] Chris was handcuffed, placed in a police vehicle and detained in cells over several hours.

[6] On **June 24, 2021**, the criminal charges were dismissed by the Court. The Crown did not proceed with any of the charges and confirmed this by its exercise of discretion to not call any evidence to support the charges.

[7] On **September 7, 2021**, Chris filed a Form 5 – Notice of Allegation complaint against Gary under the *Police Act*, SNS 2004, c.31.

[1] See paragraphs 49 and 72 of Gary's affidavit. Notably, Chris' evidence is accurate: "I was ultimately charged with theft of a motor vehicle and causing a disturbance, but at the time of my detention I was not informed that I was being arrested or charged for theft of a motor vehicle."- at para 8 of his affidavit. The undertaking Chris entered into on October 28, 2020, referenced both the theft of a motor vehicle and causing a disturbance.

[8] Chris testified that he received legal advice that he should first defend against and resolve the *Criminal Code* charges before filing a civil action. I accept that he received this advice and intended to follow it.

[9] According to Gary, Sgt. A.J. MacIsaac's Report (Form 11 – Decision of the Police Authority - Public Complaint):

> …made findings that I had committed two disciplinary defaults in my reporting and disclosure requirements…Despite the fact that I had accepted the discipline imposed against me, and completed it, [Chris] filed a Form 13 – Notice of Review Public Complaint…The Nova Scotia Police Complaints Commissioner, Patrick Curran accepted the Form 13…for his review…We received a decision from the Commissioner…February 17, 2023...The Commissioner decided that only one of the complaints which had been made by [Chris] should be referred to the Police Review Board.… I… filed a Notice for Judicial Review on March 24, 2023…The Court decided to dismiss my judicial review application as being premature in a decision delivered orally on May 23, 2023.…I am near retirement and these complaints, and this process have taken a serious toll on my health and has damaged my reputation.

A - The pleadings

[10] **On June 15, 2023, Chris has filed a civil suit/Notice of Action against**:

1. **TD** - for breach of contract; negligence; actionable false misrepresentations;

2. **Enterprise and Rebecca Benvie** - for negligence, falsely reporting the rental vehicle stolen, and being an initiator of malicious prosecution;

3. **CBRM/CBRPS/Gary Fraser**- vicarious liability for the actions of Gary Fraser: the tort of negligent investigation; false imprisonment/ unlawful detention and violation of sections 7, 9 and 10(a) of the *Canadian Charter of Rights and Freedoms*; abuse of authority/ misfeasance in public office; malicious prosecution; the tort of abuse of process; defamation; the tort of public placement in a false light.

[11] At paragraph 68 of Chris' January 29, 2024, brief, he makes it plain that he has not pleaded the tort of intentional infliction of mental distress. Therefore, I will

not address arguments arising in Gary's January 22, 2024, brief at paragraphs 108 – 109.

[12] Regarding the claimed tort of public placement in a false light, in his brief at paragraph 121 Gary states: "the tort of publicly placing a person in a false light is not recognized as a tort in Nova Scotia. Thus, the that claim should be dismissed as not disclosing a cause of action".[2] In my view, Nova Scotia should be reluctant to adopt such new categories of tort claims.

[13] **Gary has responded with his own Defence and Counterclaim against Chris** claiming defamation and the tort of abuse of process - Gary elaborated in his testimony that the latter claim rests on his position that Chris is merely using the *Police Act* proceedings to gather evidence to bolster his civil claim.

B - The pre-trial motions

[14] Three forms of pre-trial motions have been made (disallowance of limitation periods - s. 12 *Limitation of Actions Act* ("LAA"); summary judgment on pleadings - CPR 13.03; summary judgment on evidence - CPR 13.04)[3].

[15] **Chris'** motion filed November 6, 2023, seeks:

(a) an order for summary judgment on evidence (CPR 13.04) dismissing the entirety of the Counterclaim advanced by Gary;

(b) an order pursuant to s. 12(3) of the *Limitation of Actions Act*, SNS 2014, C. 35, disallowing all defences raised based on a limitation period and allowing all claims to proceed that would have been subject to any such defences raised by any Defendants (and costs).

[2] In *Doucette v. Nova Scotia*, 2017 NSCA 17 at paras. 27-28, our Court of Appeal referred to the tort of invasion of privacy/intrusion upon seclusion. The claimed tort of public placement in false light is as yet an unrecognized tort. The facts/actions complained of under Chris' claim of public placement in false light are essentially the same that would underpin a defamation claim. The unrecognized tort is essentially duplicative of the defamation claim, and also unnecessary. I have also had the benefit of Justice Gabriel's decision *JF v. BA*, 2024 NSSC 275 which was based on claims said to offend the provisions of *the Intimate Images and Cyber Protection Act*, SNS 2019 c.7, which provides a statutory alternative remedy of damages for the same actions that could constitute a claim for the tort of public placement in false light. More recently Justice Keith reiterated in *Fraser v. MacIntosh-Wiseman*, 2024 NSSC 378 that the "public placement in false light" tort has not been recognized in Nova Scotia – paras. 150-152.

[3] I proceeded with the s. 12(2) *LAA* analysis first, consistent with Justice Norton's recommendation in *Sears v. Top o' The Mountain Apartments Ltd.*, 2021 NSSC 80 at para. 3.

[16] **TD** filed its motion seeking "an order for summary judgment (on pleadings) dismissing all claims against them pursuant to CPR 13.03" (and costs).

[17] **Gary** filed his motion seeking "an order for summary judgment (on pleadings) dismissing the entire action of [Chris], pursuant to CPR 13.03" (and costs).

[18] **CBRM/CBRPS** filed their motion seeking "an order for summary judgment on pleadings under Rule 13.03 dismissing in their entirety the claims of the Plaintiff… on the basis that the claims are out of time under the applicable statutory limitation periods imposed by the *Municipal Government Act*… and the *Limitation of Actions Act*" (and costs).

[19] **Enterprise and Rebecca Benvie** filed their motion seeking "an order for summary judgment [on pleadings] dismissing all claims against them pursuant to CPR 13.03" (also relying on the *Limitation of Actions Act* limitation period).

[20] In this decision I am only dealing with Chris' motion, which is seeking to prevent the Defendants from relying upon the expiry of any limitation period pursuant to s. 12 of the *Limitation of Actions Act*.

[21] Notably, the Defendants rely upon the following limitation periods:

- the **two-year limitation period** pursuant to s. 8 of the *Limitation of Actions Act*.
- the **two-year limitation period** arising from the contractual provisions between Chris and TD which precisely duplicate/incorporate the limitation period found in the Automobile Insurance Contract Mandatory Conditions Regulations, NS Regs. 191/2003 into the Standard Automobile Policy under Schedule 1.[4]
- The **one-year limitation period** arising from s. 512 of the *Municipal Government Act*, SNS 1998, c.18.

[I agree that pursuant to *s.* 6 of the *Limitation of Actions Act*, the limitation period in s. 512 of the *Municipal Government Act* prevails: "(1) For the purpose of the

[4] In *Barry v. HRM*, 2018 NSCA 79, the Court confirmed that the Standard Automobile Policy was pursuant to an enactment such that section 12 of *the Limitation of Actions Act* could apply and hence to claims by Chris against TD in this case.

Limitation of Actions Act, the limitation period … is twelve months" [less 1 month notice of the intended action per s. 512(3).]

[22] I conclude the Chris' motion should be granted.

C – Background

i - A summary of the facts respecting the claimed "theft" of a motor vehicle[5]

[23] Chris had motor vehicle coverage with TD. He lives in Pictou County, Nova Scotia.

[24] His car was damaged and TD was prepared to pay for the repairs, as well as a rental car while the repairs were being completed by Campbell's Autobody in the Sydney, Cape Breton area.

[25] Chris received the replacement vehicle from the Sydney, Cape Breton, Enterprise location on September 1, 2020.

[26] The contract initially stipulated the rental car be returned to Enterprise by September 5, 2020, by 12 noon. Since TD was paying Enterprise for the rental, Enterprise was content to continue renting the vehicle to Chris for as long as TD would pay for it.

[27] A dispute arose between TD and Chris about the quality and extent of the repairs that TD was responsible for under the contract of insurance.

[28] This dispute bled over into the present issues about how long Chris could keep the rental vehicle.

[29] TD initially authorized that Chris would have a rental vehicle from September 1 until September 14, 2020.

[30] However, in an ongoing manner, TD expressly agreed to extend that date as a result of delays in the repairs being completed.

[31] On **September 4, 2020**, TD authorized an estimate for repairs $2,453.64. A cheque was issued to Campbell's Autobody in that amount.

[5] I review the factual background merely for context, regarding the section 12 *LAA* analysis.

[32] Chris disputed this amount. On September 14, 2020, TD revised its position and increased the amount payable to $3,422.86.

[33] On **September 21, 2020**, TD advised Chris in writing that if he wanted work done beyond the amount authorized by TD, he was welcome to do so provided he paid Campbell's Autobody for such work.

[34] That written communication also included the following:

> The approved estimate is for a 7-day repair. **The last date that your rental will be covered by TD insurance is seven business days from today, September 29, 2020**. Any days after this date that you continue to use the rental may result in rental charges be billed to you.

[35] Chris responded on September 22, 2020, by an email, which read in part:

> So just to be clear the insurance company is not willing to fix my vehicle back to Volkswagen certified standards or paint manufacturer standards? … **Also no additional charges will be billed to me for the rental as it was stated to me that I have a high rate for rentals (5000). If this is an issue, please let me know as I will start the legal process.**

[36] On September 24, 2020, Chris emailed Campbell's Autobody:

> … I am assuming from the conversation I had with the TD representative (Francesco)[6] **that it was recorded that my rental will stay with me till the repairs are complete. I did receive a call from Enterprise stating that the rental is to be returned by Friday [September 29, 2020], I am assuming that this is a scare tactic. I am also assuming that my car will not be released until payment is made to you in full, so until then, I would be using the rental car. If I have to go the route of RTA [right to appraisal] or Small Claims Court, I am prepared to do so as this is a no-fault accident.**

[37] On **September 25, 2020**, Francesco DeFeo wrote back to Chris by email:

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[6] This is a reference to a conversation which Chris had apparently audio-recorded and he references at paragraph 8 (h) of his affidavit: "Such exchanges I had with TD insurance included a telephone conversation with TD insurance representative Francesco DeFeo in the context of discussing what would happen if there were delays in completing vehicle repairs or the repair shop will not release them vehicle until they are paid, and I needed to keep the rental vehicle longer; **Mr. DeFeo (among other things) assured me that there would be no issues with the time over which I needed the rental vehicle being covered and paid for by TD Insurance and that the rental would be 'kind of unlimited', as well as that the only time the rental contract will be transferred to an insured would be if the insured was 'literally unwilling to go pick up [his] vehicle once all repairs are complete**'."

> As indicated in my previous email [I infer that this is Francesco's September 21, 2020, email] I have advised you in the process and conditions for your claim. **You will receive a letter in the mail advising of <u>our final position</u>** and what steps you may take if you wish to dispute this decision.

[38] On **October 1, 2020**, TD Canada Support member Berge Karageusian wrote to Francesco: "Please advise if the 09/29 is firm final any balance is customer pay – as he refuses to return rental – please read the email below for details thanks." [The "email below" must be a reference to TD's September 21, 2020, email to Chris.]

[39] On **October 8, 2020**, "**TD sent a position letter to [Chris]** indicating that the last authorized day of the rental vehicle was September 29, 2020, and if the insured continues the rental past that date, the cost of the rental will be his responsibility. The letter also noted the approved estimate of $3422.86."[7]

[40] Notably, that letter was sent <u>by mail</u> to Mr. Sampson's parents' address in Dominion, Cape Breton, Nova Scotia. There is no reliable evidence as to when, if at all, it was received by them, and if so, when Chris received a copy thereof.

[41] The letter read in part:

> … **Further to my last email on September 21, 2020**, we are writing to inform you that the estimate written on TD insurance indicates what repairs are approved and covered under this claim.
>
> **Here is what you need to know**:
>
> - The repair estimate was written and approved by TD on the amount of $3422.86.
> - As per Section F 4(6), your policy entitles you like kind and quality parts.
> - **You are entitled to a rental for the duration of repairs** and we have confirmed that the repairs will take 7 days.
> - **You picked up the rental vehicle on September 1st; the last authorized day of rental is September 29**.
> - **If you continue to use the rental past this date the cost of the rental and associated costs will be your responsibility**.

[42] On October 5, 2020, Chris had emailed Campbell's Autobody:[8]

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[7] Pam Cole's affidavit at paragraph 26.

[8] See also Pamela Cole's affidavit Exhibit A – page 4, October 8, 2020, which is an email from Chris to Francesco DeFeo et al.: "Hello to all: I am sending this email as I **received notification** [I infer from Campbell's Autobody] **that**

> Hello, **I have received a phone call from Enterprise regarding the vehicle.** I explained to them that my vehicle is not ready yet and they would have to contact the insurance company. **I see that my vehicle should be ready this week from the earlier email I have received from you**. I feel contacting the insurance company is pointless because I'm still waiting for a reply regarding RTA and icar procedure. **What do I do now**.

[43] On **October 8, 2020, 6:17, Chris sent an email to Francesco** and others:

> Hello to all: I am sending this email as **I received notification that my vehicle is complete pending payment**. There is a balance of $1152.47 that Campbell's Autobody is awaiting before releasing vehicle. I have had Dave from Enterprise call me regarding the rental and **I explained that my vehicle was not even complete at the time of his phone call.** Dave was hoping to reach out to TD and have someone contact me as I have not received any further emails back from Francesco or Wade. I do not have the money to pay for this remaining balance and believe that I should not have to pay for an accident that I did not cause (no fault) … **I will be using the rental until TD makes payment with Campbell's Autobody**. If there is any issues with the price please contact Campbell's Autobody as they can better explain the bill."

[44] On **October 8, 2020, at about 6:22 Francesco sent Chris a response email** that read:

> As indicated in my previous email [I infer that this is Francesco's September 21, 2020, email to Chris - p. 8 Pam Cole's affidavit Exh. "A"] I have advised you on the process and conditions for your claim.
>
> **As advised previously, the estimate that was written by Wade and provided to the repair shop is what TD insurance will pay for under this claim**. If you would like any work done differently that is not approved by the TD insurance appraiser, then those costs will be your responsibility. If the repair shop you have chosen decides to repair the vehicle in a manner different than the approved estimate, then those costs will be your responsibility. **You will receive a letter in the mail advising of our final position and what steps you may take if you wish to dispute this decision**.

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my vehicle is complete pending payment. There is a balance of $1152.47 that Campbell's Autobody is awaiting before releasing vehicle. I have had Dave from Enterprise call me regarding the rental and **I explained that my vehicle was not even complete at the time of his phone call**. Dave was hoping to reach out to TD and have someone contact me as I have not received any further emails back from Francesco or Wade. … **I will be using the rental until TD makes payment with Campbell's Autobody**. If there is any issues with the price please contact Campbell's Autobody as they can better explain the bill."

[45] I am satisfied that on October 8, 2020, Chris had not yet received TD's October 8, 2020, mailed letter to his parents' address in Cape Breton, with its "final position" set out therein.

[46] However, the September 29, 2020, deadline had already been earlier communicated to Chris on a telephone call from Enterprise which he characterized as a "scare tactic"; and TD's September 21, 2020, email from Francesco DeFeo to Chris (para. 22 Pam Cole's affidavit) which read in part:

> The approved estimate is for a 7 day repair. **The last date that your rental will be covered** by TD insurance is seven business days from today, **September 29, 2020**. Any days after this statement will continue to use the rental may result in rental charges.

[47] Chris remained resistant to the notion that after September 29, 2020, he would be responsible for the cost of the rental car.

[48] On October 13, 2020, Heather Jablonski recorded notes about her telephone conversation with Chris (Pam Cole's affidavit Exh. "A" p. 2):

> Authenticated to full name and used phone number on file.
>
> Spoke with insured
>
> … Advised insured his policy is not eligible for OEM parts and we cannot cover this for him
>
> … Insured advised he doesn't care and should still be covered.
>
> Advised insured he should pick up his vehicle and return rental as we will not be covering those past the length of repair approved by TD
>
> Insured advised he will not.
>
> Advised we have sent our final position letter, and it will advise of his next steps for escalation to cares or Appraisal process.
>
> Insured understood and said goodbye.
>
> (My underlining added)

[49] To the extent that Chris claims to, and testified that he did, rely upon an early conversation with Francesco DeFeo (e.g. the audio-recorded conversation, and references at paragraph 8 of his affidavit – "[he] assured me that there would be no issues with the time over which I needed the rental vehicle being covered and paid for by TD insurance and that the rental would be 'kind of unlimited'"), I find that Chris was being disingenuous when he testified that between September 29 and

October 27 2020, he believed he was legally justified in retaining custody of the rental vehicle, particularly in light of TD's later, clearly and repeatedly communicated, intention to discontinue paying for the Enterprise rental vehicle as of September 29, 2020.

[50] He knew that TD would no longer pay for the rental vehicle after September 29.

[51] He was adamant that he would not pay for the vehicle until TD paid the entire amount that would be owing to Campbell's Autobody.

[52] TD had already expressly stated it would not do so.

[53] Even if he, for a time, honestly believed that he was entitled to keep the rental vehicle until his own vehicle was returned to him, after **TD** had paid the entire amount it considered owing to Campbell's Autobody, I am satisfied that it was unreasonable for him to continue to believe that he could keep the vehicle, especially after the owner of the vehicle/**Enterprise** had demanded the return of the vehicle.

[54] Scott LeBlanc, Risk Manager with Enterprise Rent-A-Car, testified (by affidavit and in his cross-examination) that a hard copy of a letter found at Exhibit "A" of his affidavit, was on October 13, 2020, provided to FedEx, and was delivered to Chris' parents home on **October 14, 2020**.

[55] That letter contained the following:

> Re-re Renter Chris Sampson/2019 Volkswagen Golf/vehicle due: September 29, 2020
>
> Mr. Sampson
>
> On September 1, 2020, rented a vehicle from the Enterprise Rent-A-Car location in Sydney Nova Scotia. You were required to return this vehicle on or by September 29, 2020. As you have failed to comply with this requirement, we demand the return of the 2019 Volkswagen Golf… **immediately** to the location which the vehicle was rented from. **Failure to do so will result in our reporting this vehicle as stolen to the police authorities and prosecuting you to the fullest extent of the law**.
>
> [Bolding and underlining in the original]

[56] I infer that they received it, and shortly thereafter advised their son Chris of its contents.

[57] Thus, he was likely aware by October 15, 2020, of the contents of the letter.

[58] The evidence from Scott LeBlanc was that **Mr. Sampson had spoken to his area manager, Daniel Comeau, regarding the demand letter for return of the rental vehicle, and Mr. Sampson advised Mr. Comeau that he would return the vehicle on October 19, 2020**.

[59] But he did not.

[60] In his evidence Mr. Sampson confirmed this; however, he noted that on October 19 he was changing tires and ended up some rust in his eye which required him to see a surgeon and consequently, he was diverted from being able to return the rental vehicle on or about October 19.

[61] There was a little elaboration by Mr. Sampson about the effects and treatment of this eye "injury" – for example, how long was he, if ever, unable to drive the car back to Sydney Nova Scotia?

[62] He did not present any evidence that he made any attempt to communicate to Enterprise or TD that he had been diverted by the eye incident in returning the car on or before October 19, 2020.

[63] Not only was the rental vehicle not returned on October 19, 2020, but Mr. Sampson continued to have custody of the vehicle at least until October 28, 2020 – with no apparent intention to earlier return the vehicle to Enterprise Rent-A-Car.

[64] Although TD was paying for the rental vehicle, Chris' contract for the rental of the vehicle was with Enterprise.

[65] Enterprise owned the car, and Chris had told them that he personally would not be paying for the rental of the car if he kept it beyond September 29, 2020.

[66] Thus, Enterprise had been told by both Chris and TD that they would not be paying for the vehicle beyond September 29, 2020.

[67] For good reasons, Enterprise wanted the car back immediately.

[68] About **October 22, 2020**, Enterprise had reported the rental vehicle as "stolen" to the Cape Breton Regional Police Service.

[69] Mr. Sampson's reluctance to return the rental vehicle was washed away when he was advised by his own Chief of Police that the matter was being investigated as

a stolen vehicle by the Cape Breton Regional Police Service, and Enterprise continued to demand that he immediately return the vehicle to Sydney, Cape Breton.

[70] In summary, I am satisfied that between September 29 and October 27, 2020, Chris himself was well aware that he had an obligation to return the rental vehicle to Enterprise on or before September 29, 2020, and thereafter, and particularly to do so "immediately", once he became aware on or about October 15, 2020, of the contents of the October 13, 2020 letter from Enterprise.

ii - the events of October 28, 2020 (the *Criminal Code* charges)

[71] Constable Gary Fraser is a long-standing member of the Cape Breton Regional Policing Service. He was tasked with investigating the complaint of the stolen vehicle.

[72] On **October 27, 2022**, a statement was taken from Enterprise employee Rebecca Benvie. She confirmed to Constable Fraser that Enterprise had sent the October 13, 2020, letter which demanded the return the rental vehicle [by October 19, 2024, as discussed with Dan Comeau] or the vehicle would be reported stolen.

[73] When Gary became aware that Chris was a police officer, he sought him out by contacting the Town of Stellarton Police Department.

[74] The Stellarton Chief of Police returned Gary's telephone call in the morning on **October 28, 2020**.

[75] Gary "explained to Chief Hobeck that if [Chris] did not return the rental vehicle to Enterprise, he would be charged with theft of the automobile."

[76] Gary stated in his affidavit:

> At approximately 10:10 AM [Town of Stellarton Police] Chief Hobeck phoned me and indicated that [Chris] had agreed to take the vehicle in question back to the New Glasgow office of the Defendant Enterprise. … At approximately 10:55 AM I also spoke with Staff Sergeant Routledge regarding the file, he advised me to continue with the investigation of the complaint against [Chris] and to keep my Staff Sergeant advised as to the status of the situation… I then telephoned [Chris] at the telephone number that he had left with Sgt. Best when [he] had called Sgt. Best earlier. I was advised by and verily believe that [Chris] contacted Sgt. Best to complain of the fact that I had contacted Chief Hobeck with regard to this matter.… [Chris] accepted my call, and we spoke. I also explained to him that if he was driving the vehicle, he was driving a stolen vehicle.… I then explained to [Chris]

> that a demand letter had been sent to [him] from Enterprise demanding the vehicle be brought back or they would report it stolen. **[Chris] acknowledged that he was aware of the letter, as his father had received it and called him right away to tell them about it.… told me that he felt the demand letter was simply a 'scare tactic' on the part of the Enterprise and his insurance company**… During the conversation with [Chris] I could hear clicking sounds and I was concerned that he was recording our conversation… he acknowledged that he was. I explained to him that he did not have my permission to record the conversation and that I was terminating the call.… On that same date, **October 28, 2020, at approximately 5:30 PM Benvie called 911 to report that [Chris] was yelling and banging on the building at the Enterprise location**… An audio recording of that 911 call is provided herewith as Exhibit A .1 to this my affidavit... **At approximately 5:37 PM I placed [Chris] under arrest for investigative purposes, causing a disturbance and breach of the peace. I did then, and do still now believe, that I had reasonable grounds to arrest [Chris]**.

[77] Gary took statements from two Enterprise employees (Colby Smith and Rebecca Benvie) at the Sydney location in the afternoon of October 28, 2020.

[78] **Chris stated in his affidavit**:

> 8(k) TD Insurance stopped making payment of the rental costs for the rental vehicle and Enterprise sought return of the rental vehicle and reported the rental vehicle stolen, despite knowing there was a civil dispute over the cost of the ongoing rental; I know this and believe it to be true based on communication eventually reviewed or had with representatives of TD Insurance as well as Enterprise, as well as later from Gary Fraser.
>
> …
>
> (m) On October 28, 2020 I spoke with the Gary Fraser, who was holding himself out at such time as acting as a constable with the CBRPS, while I was driving to Sydney, Nova Scotia to return the rental vehicle to the Enterprise and at such time I expressly informed the defendant Gary Fraser that is what I was in the course of doing.
>
> (n) On that October 28, 2020 phone call I had with Gary Fraser, despite being advised that I was in the process of returning the rental vehicle to the Enterprise, Gary Fraser became irate, confrontational, belligerent, unprofessional and also threatening and disparaging of me as a policing professional, and Gary Fraser ultimately hung up on me; I was left with the impression the Gary Fraser was going to try to use his position as a police officer to take some action adverse to me, notwithstanding his being informed that I was in transit to return the rental vehicle to Enterprise.
>
> (o) When I returned the rental vehicle to Enterprise's location in Sydney, I attempted to coordinate with Enterprise staff steps necessary to return the rental

vehicle and sought written confirmation of its return as well as a refunding of a deposit.

(p) There was not cooperation with return of my deposit or even providing the written confirmation that the rental vehicle had been returned, for reasons not clear to me.

(q) Rebecca Benvie was working at the Enterprise premises when I was in the process of returning the rental vehicle; I believe I had spoken with someone named 'Rebecca' earlier on concerning the rental vehicle; I learned from various records produced in legal processes, including material within the 'Record' disclosed in Judicial Review proceedings (and I do verily believe it to be true) that Rebecca Benvie called 911 while I was at the Enterprise location and made statements alleging aggressive behaviour by me which were not an accurate portrayal of what was unfolding.

(r) Not long after my arriving at Enterprises premises on October 28, 2020, Gary Fraser and other members of the CBRPS force arrived while I was on a phone speaking with an Enterprise manager Dan Comeau, and Gary Fraser then detained me without a warrant, forcing me to be handcuffed, confined in a police cruiser, then confined within a holding cell for an extended period of time.

(s) Gary Fraser ultimately arrested me on October 28, 2020, although when he initially interfered with my person what he told me he was doing was confusing and may have been somewhat contradictory.

(t) I was ultimately charged with theft of a motor vehicle and causing a disturbance… but at the time of my detention I was not informed that I was being arrested or charged for theft of a motor vehicle.

…

19 Following the above events, effective October 29, 2020 I was suspended from active duty indefinitely was Stellarton Police Services; when more information concerning the [*Criminal Code*] charges was provided to the Stellarton Police Services, I was able to return to duties in January 2021 after being deprived of my work and my professional passion for over two months.

20 The charges hung over me for more than half a year, but in June 2021 the charges were dismissed with the Crown having then determined not to proceed and calling no evidence.

21 On September 7, 2021, after having criminal charges against me dismissed and no longer something I had to deal with or focus on, I proceeded to file a complaint against Gary Fraser under the *Police Act.*

…

23 On or about February 17, 2023, I received notice, a true copy of which is attached hereto as Exhibit "C" that the Nova Scotia Police Complaints Commissioner decided to refer to the Nova Scotia Police Review Board for hearing,

my complaint allegation around the issue Nova Scotia Police Commissioner framed as follows:

> That on October 28, 2020, at Sydney Nova Scotia, Constable Gary Fraser of the Cape Breton Regional Police Service arrested Christopher Sampson for theft in relation to a civil dispute, thus making an arrest without good and sufficient cause and committing a disciplinary default contrary to section 24(7)(a) of the Code of Conduct in the Nova Scotia Police Regulations.

…

25 Without intending any waiver of privilege, I contacted and retained my current legal counsel Donn Fraser in April 2023.

26 … after retaining Donn Fraser, I determined to proceed with legal action in terms of a civil lawsuit over what happened to me and which I have described generally above.

27 On April 17, 2023, I am advised by Donn Fraser, and I do verily believe that he forwarded to internal legal counsel for the Cape Breton Regional Municipality and its CBRPS a Notice of Intended Legal Proceeding….

…

28 I have always intended to pursue legal action in a civil claim for what was done to me in terms of what happened on October 28, 2020, and in relation to it, and in respect of the [*Criminal Code*] charges, at what would be the appropriate time.

…

31 I thought that it was appropriate for me to see the complaint process is completed over Gary Fraser's involvement in what was done to me, before taking other legal steps.

32 Before retaining Donn Fraser, I spoke with other lawyers and had a brief consultation with one about what I was doing with pursuing a complaint process against Gary Fraser and my intentions to pursue civil claims for damages over what was done to me; without intending to waive any privilege, my understanding from this consultation was that the sequence I was following was appropriate and that it would be helpful to finalize the complaint process is against Gary Fraser before commencing a civil action; I did not retain the lawyer I consulted with to take any steps on my behalf in connection with a claim for what happened to me, because he was too busy to become involved.

33 At all times I tried to act diligently in doing anything I understood was necessary in a formal process I was involved in concerning what was done to me (as described above), whether that was in the course of the *Police Act* complaint process, having my criminal defence lawyer deal with the [*Criminal Code*] charges,

dealing with anything required in complaint processes or doing what was necessary in the Judicial Review proceeding.

…

35 Again, without intending to waive any privilege, I can state that at no time prior to my retaining Donn Fraser as legal counsel in April 2023, was I aware that some parties potentially responsible for harm caused to me in the events I have described in this affidavit might argue limitation period defences could bar my claim or that I was too late in starting a civil claim for damages or what any limitation time periods might be for any such civil claims or how such limitation period law work.

…

40 If limitation period defences raised by the various defendants are allowed and my civil claims in this action cannot proceed, I do not know of any other means to recover damages for the injury I have suffered from the events described in this affidavit; however, I am not aware of any prejudice to the Defendant would suffer now that would not exist if this legal action had been brought against them at an earlier time.

41 I did not initiate this legal proceeding for any purpose other than advancing my civil claims for damages that are sought in this legal action… I did not start this legal proceeding for the purpose of bolstering claims before the Police Complaints Commissioner or the Police Review Board nor to utilize procedures available under the Nova Scotia Civil Procedure Rules to obtain disclosure or conduct discoveries for any use in any process before the Police Review Board.

…

45 I do not want to have to incur time, effort and expense in the litigating the same or similar issues twice if that is at all possible, as I proceed to have my civil claims for damages addressed and to have my complaint under the *Police Act* concerning what I see as misconduct by Gary Fraser also addressed.

…

47 I am advised by Donn Fraser and do verily believe that when filing the Judicial Review proceeding with the Supreme Court of Nova Scotia, Gary Fraser also filed a motion seeking to stay proceedings before the Nova Scotia Police Review Board in relation to my complaint under the Police Act while the Judicial Review proceeding was dealt with.

[My underlining added]

D - The motion to be decided

[79] Chris has made a motion for:

- an Order pursuant to s 12(3) of the *Limitation of Actions Act*, SNS 2014, c. 35, disallowing all defences raised based on a limitation period and allowing all claims to proceed that would have been subject to any such defences raised by any Defendants [and costs].

[80] Relevant to my decision are the following sections:

GENERAL LIMITATION PERIODS

General rules

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.

(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.

…

(3) For the purpose of clause (1)(b), the day an act or omission on which a claim is based occurred is

(a) in the case of a continuous act or omission, the day on which the act or omission ceases; and

(b) in the case of a series of acts or omissions concerning the same obligation, the day on which the last act or omission in the series occurs.

Burden of proof

9 (1) A claimant has the burden of proving that a claim was brought within the limitation period established by clause 8(1)(a).

(2) A defendant has the burden of proving that a claim was not brought within the limitation period established by clause 8(1)(b).

…

Disallowance or invocation of limitation period

12 (1) In this Section, "limitation period" means the limitation period established by

(a) clause 8(1)(a); or

(b) any enactment other than this Act.

(2) **This Section applies only to claims brought to recover damages in respect of personal injuries.**

(3) Where a claim is brought without regard to the limitation period applicable to the claim, and an order has not been made under subsection (4), the court in which the claim is brought, upon application, may disallow a defence based on the limitation period and allow the claim to proceed if it appears to the court to be just having regard to the degree to which

(a) the limitation period creates a hardship to the claimant or any person whom the claimant represents; and

(b) any decision of the court under this Section would create a hardship to the defendant or any person whom the defendant represents, or any other person.

(4) Where a limitation period has expired, a person who wishes to invoke the limitation period, upon giving at least 30 days' notice to any person who may have a claim, may apply to the court for an order terminating the right of the person to whom such notice was given from commencing the claim and the court may issue such order or may authorize the commencement of the claim only if it is commenced on or before a day determined by the court.

(5) In making a determination under subsection (3), the court shall have regard to all the circumstances of the case and, in particular, to

(a) the length of and the reasons for the delay on the part of the claimant;

(b) any information or notice given by the defendant to the claimant respecting the limitation period;

(c) the effect of the passage of time on

(i) the ability of the defendant to defend the claim, and

(ii) the cogency of any evidence adduced or likely to be adduced by the claimant or defendant;

(d) the conduct of the defendant after the claim was discovered, including the extent, if any, to which the defendant responded to requests reasonably made by the claimant for information or inspection for the purpose of ascertaining facts that were or might be relevant to the claim;

(e) the duration of any incapacity of the claimant arising after the date on which the claim was discovered;

(f) the extent to which the claimant acted promptly and reasonably once the claimant knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to a claim;

(g) the steps, if any, taken by the claimant to obtain medical, legal or other expert advice and the nature of any such advice the claimant may have received;

(h) the strength of the claimant's case; and

(i) any alternative remedy or compensation available to the claimant.

> **(6)** A court may not exercise the jurisdiction conferred by this Section if the claim is brought more than two years after the expiry of the limitation period applicable to that claim.
> **(7)** This Section does not apply to a claim for which the limitation period is 10 years or more.
>
> [My bolding added]

[81] Let me then briefly canvas provisionally when I conclude the limitation periods expired for each of the causes of action put forward by Chris.

[82] Section 8 of the *LAA* includes:

> (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.

[83] Chris says that all of his causes of action are in relation to "personal injuries" (be they physical or psychological) as referred to in s. 12(2) *of the LAA*, and acknowledges it is his burden to prove that each of his claims were brought within the limitation period governed by s. 8(1)(a)[9].

[84] **Chris' Notice of Action was filed June 15, 2023**.

[85] The claimed causes of action are, in respect to each of the following, and in brackets thereafter I provisionally conclude when the limitation period began to run, bearing in mind s. 8(2) of the *LAA* and the jurisprudence regarding discoverability – followed by the date of expiry:

- **TD** - for breach of contract; negligence; actionable false misrepresentations; [October 29, 2020/October 29, 2022][10]

[9] According to s. 12(1), although the reference in s. 9 *LAA* is only to s. 8 *LAA*, nevertheless the twelve-month limitation period in s. 512 of the *Municipal Government Act* should properly be seen as read into s. 9 *LAA*, in relation to those causes of action against CBRM and CBRPS/Gary; as should the limitation period in Chris' motor vehicle insurance statutory conditions, per *Barry v. Halifax*, 2018 NSCA 70 per Bourgeois JA.

[10] TD notes that Chris advised them on or about September 10, 2020 that he would be proceeding with legal action against them.

- **Enterprise and Rebecca Benvie** - for negligence, falsely reporting the rental vehicle stolen, and being an initiator of malicious prosecution; [October 29, 2020/October 29, 2022]

- **CBRM/CBRPS/(Gary Fraser)** - vicarious liability for the actions of Gary Fraser: the tort of negligent investigation; false imprisonment/unlawful detention and violation of sections 7, 9 and 10(a) of the Canadian Charter of Rights and Freedoms; abuse of authority/misfeasance in public office; malicious prosecution; the tort of abuse of process; defamation; the tort of public placement in a false light. [October 29, 2020/12 months later, with one month earlier Notice of Intended Action – approximately September 29, 2021]

[86] At paragraph 68 of Chris' January 29, 2024, brief, he makes it plain that he has not pleaded the tort of intentional infliction of mental distress. Therefore, I will not address arguments arising in Gary's January 22, 2024, brief at paragraphs 108 – 109.

[87] Regarding the claimed tort of public placement in a false light, in his brief at paragraph 121 Gary states: "the tort of publicly placing a person in a false light is not recognized as a tort in Nova Scotia. Thus, the Plaintiff's claim in this regard should be dismissed as not disclosing a cause of action. Alternatively, the material facts were not sufficiently pled to establish a claim [and thus pleadings are insufficient on summary judgment]". In my view, without cogent reasons, Nova Scotia should be reluctant to adopt such new categories of tort claims.

[88] In *Doucette v. Nova Scotia*, 2017 NSCA 17 at paras. 27-28, our Court of Appeal referred to the tort of invasion of privacy/intrusion upon seclusion. That tort being of a similar nature to the claimed tort of public placement in false light, and the facts/actions complained of under Chris' claim are essentially the same actions that would underpin a defamation claim, suggests that it is essentially duplicitous of the defamation claim, and unnecessary. To reach this point I have also had the benefit of Justice Gabriel's decision *JF v. BA*, 2024 NSSC 275 which was based on claims said to offend the provisions of the *Intimate Images and Cyber Protection Act*, SNS 2019 c.7, which also provides an alternative remedy of damages to a large extent for the same actions that could constitute a claim for the tort of public placement in false light. More recently Justice Keith reiterated that this claimed tort

has not been yet recognized in Nova Scotia – *Fraser v. MacIntosh-Wiseman*, 2024 NSSC 378. In my opinion it should not be recognized.

[89] There are sound reasons to conclude that each of Chris' causes of actions are in jeopardy of having expired before his Notice of Action/Notice of Intention to Commence Legal Action were required to be given to the Defendants.

[90] Let me then next examine whether Chris' motion to disallow reliance upon those limitation periods should be granted.

E – An examination of all the circumstances, and in particular, the s. 12 *LAA* factors

[91] I will next address Chris' position, and the evidence presented regarding each factor.

[92] To recap, Chris, as Plaintiff, filed the following motion:

> … moves for:…
>
> (b) an Order pursuant to section 12(3) of the *Limitation of Actions Act*, SNS 2014, c. 35, as amended, disallowing all Defences raised based on a limitation period and allowing all claims to proceed that would have been subject to any such Defence raised by any Defendant;
>
> (c) granting costs to the Plaintiff in such amounts and against such persons or entities as appears appropriate;
>
> (d) granting such further and other relief as necessary or appropriate in favour of the Plaintiff.

[93] Section 12 of the *LAA* reads:

> EXCEPTIONS TO THE GENERAL LIMITATION PERIODS
> …
> **Disallowance or invocation of limitation period**
> 12(1) In this Section, "limitation period" means the limitation period established by
> (a) clause 8(1)(a); or
> (b) any enactment other than this Act.
> (2) **This Section applies only to claims brought to recover damages in respect of personal injuries.**
> (3) **Where a claim is brought without regard to the limitation period applicable to the claim**, and an order has not been made under subsection (4), **the court** in which the claim is brought, upon application, **may disallow a**

defence based on the limitation period and allow the claim to proceed if it appears to the court to be just having regard to the degree to which

(a) the limitation period creates a hardship to the claimant or any person whom the claimant represents; and

(b) any decision of the court under this Section would create a hardship to the defendant or any person whom the defendant represents, or any other person.

(4) Where a limitation period has expired, a person who wishes to invoke the limitation period, upon giving at least 30 days' notice to any person who may have a claim, may apply to the court for an order terminating the right of the person to whom such notice was given from commencing the claim and the court may issue such order or may authorize the commencement of the claim only if it is commenced on or before a day determined by the court.

(5) **In making a determination under subsection (3), the court shall have regard to all the circumstances of the case and, in particular**,

(a) the length of and the reasons for the delay on the part of the claimant;

(b) any information or notice given by the defendant to the claimant respecting the limitation period;

(c) the effect of the passage of time on

(i) the ability of the defendant to defend the claim, and

(ii) the cogency of any evidence adduced or likely to be adduced by the claimant or defendant;

(d) the conduct of the defendant after the claim was discovered, including the extent, if any, to which the defendant responded to requests reasonably made by the claimant for information or inspection for the purpose of ascertaining facts that were or might be relevant to the claim;

(e) the duration of any incapacity of the claimant arising after the date on which the claim was discovered;

(f) the extent to which the claimant acted promptly and reasonably once the claimant knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to a claim;

(g) the steps, if any, taken by the claimant to obtain medical, legal or other expert advice and the nature of any such advice the claimant may have received;

(h) the strength of the claimant's case; and

(i) any alternative remedy or compensation available to the claimant.

(6) **A court may not exercise the jurisdiction conferred by this Section if the claim is brought more than two years after the expiry of the limitation period applicable to that claim**.

(7) This Section does not apply to a claim for which the limitation period is 10 years or more.

[My bolding added]

F - When did the limitation periods expire?

[94] Chris filed his Notice of Action on **June 15, 2023**.

[95] Section 8 of the *LAA* addresses when the claims were discoverable, which triggers the running of the relevant limitation period.

[96] Chris' claims against **TD** are for breach of contract (including a duty of utmost good faith-para. 34 Amended Statement of Claim seeking exemplary damages), negligence, and actionable false misrepresentations. These all relate to TD's conduct on or before October 29, 2020, and the limitation period would have expired on **October 29, 2022**.[11]

[97] His claims against **Enterprise/Ms. Benvie** are for vicarious and personal liability for negligence/false report of a stolen vehicle – as an initiator of malicious prosecution (paragraph 20 Amended Statement of Claim).

[98] These relate to their conduct on or before October 29, 2020, and the negligence claim would have expired on **October 29, 2022** - whether by way of the s. 8 of the *LAA* or the contractual limitation period – albeit the malicious prosecution claim against them is an ongoing claim, that was not time-barred until two years after June 24, 2021, that is, **June 24, 2023**, when those criminal proceedings terminated in Chris' favour.

[99] Chris' malicious prosecution claim was filed before the limitation period expired regarding these Defendants.

[100] Therefore, Chris' malicious prosecution claim had not expired as a result of a limitation period regarding these Defendants, when he filed his claims on June 15, 2023.

[101] Malicious prosecution is an ongoing claim, as Justice Farrar stated in *Howe v. Rees*, 2024 NSCA 16:

> [55] With respect, although there may be some room for that argument to be made at trial in consideration of all the evidence, it is not clear on the facts as pleaded in this case the limitation period had expired at the time the action was commenced. **There is ample**

[11] See also Gary's brief of January 22, 2024, at para.3, listing all of Chris' claims including for "an intentional infliction of mental distress". Chris replied at para. 68 of his January 29, 2024, brief: "Paragraphs 108-109 of the Defendant Gary Fraser's January 22, 2024, submissions speak of the tort of intentional infliction of mental distress, which is not even an issue in this case. It has not been pleaded or asserted as a cause of action."

> **support in the caselaw that the limitation period for malicious prosecution starts when the proceedings are terminated**.
>
> …
>
> [73] It follows that this premise would apply equally to a claimant pursuing the tort of malicious prosecution in relation to civil proceedings. Regardless of the context, **the claimant must know the proceedings were resolved in their favour before they can plead the tort of malicious prosecution. Only at that point is it possible for the plaintiff to discover the injury they have suffered was caused by conduct which meets the criteria for the tort of malicious prosecution**.
>
> [My bolding added]

[102] Chris' claims against **CBRM/CBRPS (and Gary)** (summarized at para. 3 of his January 22, 2024, brief) are for vicarious liability of their agents for negligent investigation; false imprisonment/unlawful detention/arrest; violations of sections 7, 9, and 10 (a) of the *Canadian Charter of Rights and Freedoms*; the tort of abuse of process (para. 49 Amended Statement of Claim)[12]; malfeasance in public office and malicious prosecution, defamation and publicly placing in a false light [the latter two of which are unsustainable – see Justice Wright's reasons in *Islam v. Maritime Muslim Academy*, 2019 NSSC 53, and I am satisfied that placing in a false light is not, and should not be, a tort recognized in Nova Scotia].

[103] *Criminal Code* charges (theft of motor vehicle and causing a disturbance) were laid by Gary as a peace officer against Chris, on or about October 28, 2020. These charges were dismissed by the Court, after Crown Counsel from the Public Prosecution Service of Nova Scotia offered no evidence, on June 24, 2021.[13]

[104] Except malicious prosecution, Chris' extant claims relate to the Defendants' conduct on or before **October 29, 2020**.

[105] Therefore, each of those nominal legal claims against CBRM/CBRPS/Gary, were filed after the s. 12(1) *of the LAA* limitation period had passed on **October 29, 2021** (12 months per s. 512 *Municipal Government Act*) and which were not served on them until April 2023.

---

[12] The elements of the tort of abuse of process, are set out in the reasons in *Harris v. GlaxoKlineSmith Inc.*, 2010 ONCA 872 per Moldaver, JA (as he then was) at paragraphs 5, and 27 – 31; leave to appeal to Supreme Court of Canada dismissed July 14, 2011. Chris' position is based on his factual claims in relation to Gary's October 28, 2020, statements and conduct towards him – i.e. that rather than letting the matter proceed as a civil claim, he was going to "deal with it in a different way", which Chris says is a reference that Gary, who by then had an *animus* against him, was going to lay a *Criminal Code* charge against Chris for the theft of the motor vehicle.

[13] There has been no suggestion that there was any misconduct by the Nova Scotia Public Prosecution Service. Chris' claim of malicious prosecution is limited to Mr. Fraser, vicariously CBRM/CBRPS, and Rebecca Benvie/Enterprise, as being an initiator of the *Criminal Code* charges.

[106] The malicious prosecution claim's limitation period expired 12 months after June 24, 2021 - namely, **June 24, 2022** - and therefore that claim against CBRM/CBRPS/Gary, was also filed after the expiration of the limitation period.[14]

G - What threshold burden does the plaintiff bear to establish that he has suffered "personal injuries" as a prerequisite to relying on s. 12(2) *of the LAA* to disallow a *LAA* defence?

[107] In my opinion, it is a persuasive burden, not an evidentiary burden.[15]

[108] Section 12(2) of the *LAA* reads: "This section applies only to claims brought to recover damages in respect of personal injuries."

[109] "Personal injuries" is not defined in the *Act*.

[110] Gary, CBRM, CBRPS, TD, and Enterprise/Benvie all argue that Chris' claims are not properly characterized as being "in respect of personal injuries" within the meaning intended by s. 12(2) of the *LAA*.

[111] Therefore, they say Chris cannot rely on s. 12(3) for a disallowance of the Defendants' limitation period defences.

[112] To the extent that they rely on evidence in support of this argument, I disagree.

[113] I conclude that when considering a motion under s. 12(2), any consideration of evidence is inappropriate.

---

[14] I have available to me evidence in relation to this issue, and I have concluded based on that evidence that the limitation period began to run as of June 24, 2021. I have kept in mind Justice Farrar's comments in *Howe*, 2024 NSCA 6: [73] It follows that this premise would apply equally to a claimant pursuing the tort of malicious prosecution in relation to civil proceedings. Regardless of the context, the claimant must know the proceedings were resolved in their favour before they can plead the tort of malicious prosecution. Only at that point is it possible for the plaintiff to discover the injury they have suffered was caused by conduct which meets the criteria for the tort of malicious prosecution. [74] Although I have discussed in some detail the caselaw which suggests the limitation period for malicious prosecution commences when the proceedings are terminated, I am not making the determination that the limitation period in this case commenced on the termination of the proceedings against Mr. Howe. However, it is clearly not untenable that may be the case. Indeed, it is likely to be the outcome, but that is an issue to be determined based on evidence."

[15] However, the parties did present evidence on the motion to disallow limitation period defences, for example: at paragraph 5– 15 of the September 25, 2024, letter from Gary's counsel; paragraphs 3 and 40 – 50 of the January 29, 2024, brief, which they argue is relevant to the issue of whether Chris had relevant "personal injuries".

[114] This is because, in my opinion, whether the circumstances of the claim are "brought to recover damages in respect of personal injuries" should be assessed based on the pleadings.[16]

[115] Therefore, I should consider, to the extent that their arguments require it (based on a reading of the pleadings and the *LAA*), whether in law Chris' claims meet that persuasive threshold, so that he is not precluded from going on to argue under s. 12(5), based on evidence, that the limitation period defences should be disallowed.

[116] Chris relies upon two Supreme Court of Canada decisions: *Saadati v. Moorhead*, 2017 SCC 28 at para. 35-36; *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at para. 8; as well as *Bond v. Willson*, 2018 NSSC 287.

[117] I will also turn to the jurisprudence.

[118] In *Islam v. Maritime Muslim Academy*, 2019 NSSC 53 at para. 23, Justice Wright concluded that defamation was not a claim for damages "in respect of personal injuries":

> [16] Plaintiffs' counsel argues the proposition that an action in defamation constitutes a personal injury claim which thereby enables the court to exercise its discretion to disallow a limitation defence under s.12(3). **The statutory interpretation of the term "personal injuries" contained in s.12(2) and whether it extends to defamation cases is a question of law**. That is a question the Court is now prepared to address, bearing in mind the guidance provided by the Nova

[16] Section12(3) clearly requires the Court to make a decision based on an evidentiary basis, whereas I am of the opinion that s. 12(2) does not. To my mind, the intention of the Legislature, by its choice of wording for section 12 (2), was to purposefully use wording that the disallowance of limitation periods would only be permitted in relation to "claims brought to recover damages in respect of personal injuries". I surmise the thinking was that some forms of "personal injuries" are either not prone to be sufficiently discoverable, or even if discoverable, not prone to be disclosed, within the two-year general statutory limitation period. Thus, the Legislature made a policy choice across the board that, any pleading that expressly claims "personal injuries" or read on its face is tantamount to a claim regarding "personal injuries" is sufficient to pass the generalized threshold the Legislature has established in section 12(2). Interestingly, Justice Bryson observed in *Willson v. Bond Estate*, 2019 NSCA 24 regarding s. 12(3) *LAA*: "*Did the judge err in weighing the available evidence and commenting on the merits of the ultimate issue?* [26] This complaint appears to relate to the judge's consideration of whether to extend the limitation period under s. 12 of the *Limitation of Actions Act*. The appellants say he should not have weighed the evidence. Assuming it was necessary to do so, this is precisely what should be done when exercising discretion to extend time. Since this case does not turn on that Act, further comment on this ground of appeal is unnecessary." If I am wrong in my interpretation, and s. 12(2) does require an examination of the available evidence in the course of assessing the factors under s. 12(5), I am satisfied on the evidence that was made available to the Court that Chris has established his "claims [are] brought to recover damages in respect of personal injuries".

> Scotia Court of Appeal in deciding summary judgment motions found in *Shannex Inc. v. Dora Construction Ltd.*, 2016 NSCA 89.
>
> [23] … the proposition that a defamation action should be characterized as a claim brought to recover damages in respect of personal injuries is completely untenable and has no real chance of success. **The plain, ordinary and unequivocal meaning of the phrase 'personal injuries' as understood in Canadian law is physical, mental or psychological injury or harm to the body or mind of the individual**. The phrase does not encompass injury to one's reputation in the community which is intrinsic in defamation actions."
>
> [My bolding added]

[119] I adopt as a working definition of "personal injuries", Justice Wright's words which I have bolded.[17]

[120] What then are Chris' "personal injuries" claims, **and** are all his claims "in respect of" his stated "personal injuries"?

[121] In support of his motion under s. 12(2) of the *LAA*, Chris has pleaded such (paras. 7, 22-29, 32-35, 45, 58D-H, 59-64) and produced evidence in his affidavit at paras. 8(u) and 38-39 and *viva voce* evidence, to buttress the argument that his claims are in law and in fact, "in respect of personal injuries".

[122] I look only to the pleadings, read on their face, regarding whether I am persuaded that they disclose "a claim brought to recover damages in respect of personal injuries".

[123] Throughout his Amended Statement of Claim, Chris refers to:

> This [sic] claims herein are brought to recover damages in respect of personal injuries to the Plaintiff, stemming from a wrongful arrest and detention and all surrounding circumstances, which arose in circumstances in which each of the Defendants owed obligations to Plaintiff and for which the Defendants are liable. (at para. 7)
>
> … all of which caused the Plaintiff personal injury. (at para. 25).

[17] See also *AB v. Main*, 2023 NSSC 47 per Smith, CJ; *Bond Estate v. Willson*, 2018 NSSC 287 at paras. 66-72 per Arnold J - appeal dismissed 2019 NSCA 24 per Bryson JA: "*Did the judge err by mischaracterizing a fatal injury as a personal injury*? [24] If this is a distinction, it does not matter. It is true that the damages available to a claimant under the *Fatal Injuries Act* may be more constrained than those of a living plaintiff claiming damages for professional negligence. But the cause of action derives from the deceased's claim. It is only the nature of the damages that changes. That is what Justice Cromwell said in *MacLean v. MacDonald*, on which the appellants rely.
Preston v. Sun Life Assurance Co. of Canada, 2024 NSSC 234 at para. 44.

> The events described above and elsewhere herein (for which the Defendants are responsible) were extremely traumatizing to the Plaintiff, causing him personal injuries, including but not limited to mental, psychological and emotional harm, stress, distress, and ongoing and recurring incidences of mental or psychological harm… (at para. 27)
>
> … TD Insurance committed breach of its contractual obligations… actionable misrepresentations and negligence… causing (as a matter of law) the harm… liable for such personal injury harm caused to the Plaintiff. (at para. 33)
>
> … The Defendant Enterprise… caused the Plaintiff foreseeable damages, harm and loss in the form of personal injuries. (at para. 34A)
>
> As a result of the misconduct of the Defendants, the Plaintiff has suffered significant harm, loss and damage in the form of personal injuries (including as described at paragraphs 23 and 26 to 28 and 45 above and as may otherwise appear). (at para. 59)
>
> [My underlining added]

[124] There is a sufficient pleading of "personal injuries" *per se* - albeit I recognize that the pleadings are drafted in a conclusory manner by repeatedly using the mere words "personal injuries".

[125] Fundamentally, Chris' claims are all premised on the claimed "wrongful arrest and detention [and consequently being charged with *Criminal Code* offences]" of him on October 28, 2020.

[126] It is important to recall the precise wording of s. 12(2) *LAA*, which states: "This section applies only to claims brought to recover damages **in respect of personal injuries**."[18]

[127] Let me next turn to consideration of whether Chris' claims are "in respect of personal injuries".

[128] In my opinion, **material levels of physical, mental or psychological injury or harm to the body or mind of the individual** are properly characterized as forms of "personal injuries".[19]

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[18] I have also considered: s. 9(5) of the *Interpretation Act*, RSNS 1989, c.235 as amended; including the purposes of the 2015 LAA legislation, which are helpfully condensed in Justice Norton's reasons in *Sears v. Top O' the Mountain Apartments Ltd.*, 2021 NSSC 80, at paras. 19-25.

[19] I note that even in the strict constructionist context of criminal law, a "threat to rape" was held to constitute a threat to cause "bodily harm" in *R v. McCraw*, [1991] 3 SCR 72, on the basis that such "harm" could include psychological harm, if proved beyond a reasonable doubt.

[129] Chris has satisfied the "personal injuries" requirement *per se* in s. 12(2) of the *LAA*. However, the disallowance of limitation periods by operation of s. 12(3) is only permitted in relation to those claims that are "in respect of personal injuries."

[130] Justice Arnold noted in *Bond v. Willson*, 2018 NSSC 287 at paras. 69 – 70 [upheld 2019 NSCA 24] citing *Nowegijick v. The Queen*, [1983] 1 SCR 29:

> [t]he words "in respect of" are … words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase, 'in respect of', is probably the widest of any expression intended to convey some connection between two related subject matters (para. 39).
>
> [My underlining added]

[131] However, even the breadth of the use of the words "in respect of personal injuries" has limits.

[132] I keep in mind the intention of the Legislature in its use of the language when it recently amended the legislation, prompted by "access to justice" concerns, and notions of proportionality referenced in our *Civil Procedure Rules*, as well as relevant jurisprudence including the reasoning in *Hryniak v. Mauldin*, 2014 SCC 7, and its progeny.

[133] I am not persuaded that the following claims are sufficiently "connected to" Chris' asserted "personal injuries":

1. "breach of contract" by TD; "negligence" by TD, or any claim against TD for "actionable misrepresentation" or the asserted "breach of duty of utmost good faith";

2. "negligence" by Enterprise;

3. "public misfeasance, malicious prosecution, and abuse of process" by Rebecca Benvie and Enterprise (as initiators of the complaint to police that led to his arrest)[20].

[20] While I am restricted to the pleadings, the facts in evidence are consistent therewith as well. On Oct. 28, 2020, Ms. Benvie called police as a result of Chris' behaviour that day at the Enterprise premises in Sydney, where he had returned the motor vehicle. As to the elements of "public malfeasance" see Howe v. Rees, 2022 NSSC 230 at paras. 158 – 160 – overturned on appeal, but not in relation to this point: 2024 NSCA 16.

4. "defamation" and the "public placement in a false light" of Chris by Gary/and per para. 58 of Chris' Amended Statement of Claim, by CBRM/CBRPS as vicariously liable.[21]

[134] Thus, the remaining causes of action within the ambit of a sufficient connection between the claimed causes of action and asserted "personal injuries" of Chris are:

1. Gary and CBRM/CBRPS - "negligent investigation"; "the torts of false imprisonment, [unlawful] detention, arrest and/or unlawful confinement; misfeasance, including misfeasance in a public office or position of authority; malicious prosecution"; and abuse of process; and

2. Gary and CBRM/CBRPS – "breach of [Chris'] *Charter [of Rights and Freedoms*] rights under section 7, 9 and/or 10… justifying an award of Charter damages pursuant to s. 24(1) of the Charter or otherwise."

[135] As I concluded earlier, Chris' malicious prosecution civil claim was filed before the expiration of the limitation period regarding Enterprise/Benvie, but after the expiration of the limitation period regarding Gary/CBRM/CBRPS.

[136] Chris may only request a s. 12(3) Order to disallow expired limitations defences for the remaining claims.[22]

[137] Let me then next turn to a consideration of the s. 12(5) factors, for the remaining claims.

[138] Based on the evidence presented, I will engage an assessment of the comparative hardships that the Plaintiff and each of the affected Defendants would experience if an Order is, or is not, made pursuant to s. 12(3) of the *LAA*.

Consideration of the s. 12(5) *LAA* factors

[21] I also draw support regarding my conclusions, from Justice Wright's reasoning in Islam, 2019 NSSC 53, wherein he concluded that a defamation claim could not be a claim "in respect to personal injuries".
[22] For completeness, although not implicated in the motion at hand, I mention that Gary has a Counterclaim as against Chris which remains outstanding and that Chris filed a November 6, 2023, Notice of Motion seeking an Order for summary judgment on evidence in relation thereto.

[139] As Justice Gogan (as she then was) noted in *MacDonald v. Jamieson*, 2019 NSSC 345 (albeit s. 12(4) *LAA* was the remedy sought there):[23]

> [24] In ***Barry v. Halifax (Regional Municipality)***, 2018 NSCA 70, Bourgeois, J.A. considered s. 12 of the *Act* and cautioned claimants seeking relief to put their best foot forward at paras. 77 - 78:
>
> > [77] Before undertaking a consideration of the various factors, a preliminary observation is in order. Although s. 12(3) requires a court to consider the degree of hardship to both claimant and defendant, it should not be forgotten that this exercise is triggered due to a claimant having missed a limitation period created by virtue of the Act or other enactment. As such, the burden rests on the claimant to establish that any defence arising from the lapsing of that period ought to be disallowed.
> >
> > [78] It is incumbent on a claimant to adduce evidence which addresses the factors contained in s. 12(5), in order to inform the assessment. Although s. 12(5) mandates a judge to "have regard to all the circumstances of the case", those who fail to provide an evidentiary foundation do so at their peril. Similarly, in response, a defendant (or proposed defendant) is well-advised to provide sufficient foundation to permit a comprehensive consideration of the factors in s. 12(5) in order to better inform the hardship assessment…

[140] The relevant length of the delay is a function of which claim, and which defendant, is being examined.

[141] CBRM/CBRPS and Gary have the benefit under s. 512 of the *Municipal Government Act* of a one-year limitation period.

Section 512 reads:

> **512 (1)** For the purpose of *the Limitation of Actions Act*, the limitation period for an action or proceeding against a municipality or village, the council, a council member, a village commissioner, an officer or employee of a municipality or village or against any person acting under the authority of any of them, is twelve months.
>
> **(2)** Subsection (1) applies, with all necessary changes, to a service commission and a board, commission, authority, agency or corporation of

[23] Justice Gogan also dealt with the directly relevant issues in *MacDonald v. Loblaws*, 2021 NSSC 267, (where the delay in filing a claim was less than 5 months and a motion for relief against a limitation period pursuant to s. 12(3) *LAA* was at issue) which I find is helpful regarding the circumstances of the present case.

> a municipality or a board, commission, authority, agency or corporation jointly owned or established by municipalities or villages.
>
> **(3)** No action shall be brought against any parties listed in subsection (1) or (2) unless notice is served on the intended defendant at least one month prior to the commencement of the action stating the cause of action, the name and address of the person intending to sue and the name and address of that person's solicitor or agent, if any.

[142] Therefore, the limitation period, in relation to the remaining causes of action, except malicious prosecution, would have expired by **October 29, 2021**, and formal notice to CBRM/CBRPS/Gary was required by September 29, 2021.

[143] The limitation period in relation to malicious prosecution would have expired 12 months after the termination of those proceedings on June 24, 2021 – namely **June 24, 2022**, and notice was required by May 24, 2022.

The Plaintiff's position

[144] Chris' reasons for the delay for not filing his Statement of Claim until June 15, 2023 (between 12 and 20 months later) include [the following are drawn from his brief filed January 22, 2024]:

> **12(5)(a) the length of and the reasons for the delay on the part of the claimant**
>
> [20] As set out in the Plaintiff's affidavit, there was a reasonable and rational thought process behind his pursuing or focusing on other steps before commencing this action to recover civil damages. Even if it turns out that the Plaintiff was mistaken in his thinking, even in part, his rationale and intentions do not reflect any lack of diligence, or a disregard or lackadaisical attitude on the part of the Plaintiff. He tried to pursue what he thought was the proper sequence to how he should try to address what was done to him and did so as best he could, in a diligent way.
>
> [21] In fact, the Plaintiff was legally correct in at least part of his assessment of the proper sequence and priorities to place on what legal process is to focus on first, by recognizing that the baseless charges laid against him first had to be disposed of. For claims of wrongful arrest, false imprisonment, malicious prosecution and negligent investigation, for example, case law has held that no limitation period even begins to run before the underlying criminal proceedings have run their course and have been terminated in the claimant's favour as it is only then that such causes of action can be considered complete… [citations omitted] That is setting aside, even there [*sic*] whether the legal analysis of whether a filing [of] a claim was the yet "warranted" or "appropriate", in light of other factors. The Plaintiff was accordingly not only reasonable but correct to focus on seeing the criminal charges

> first dismissed and to wait on that as a first order of business. Even if the Plaintiff is proven wrong in the understanding that it was more appropriate to first explore complaint processes under the *Police Act* before turning focus to his civil claims, that does not make his thinking unreasonable or his approach of a lackadaisical character that the Court wishes to discourage.
>
> [22] The Plaintiff disputes that while he was reasonably pursuing these other processes, limitation periods even began to run under the LAA and the analysis as to whether or not the situation had reached a point as to which it was or could be said a civil claim was "warranted" or "appropriate".… The level of reasonableness to what the Plaintiff was doing can even be supported by the fact that it has now generated a significant volume of front-end investigation and evidence gathering that will benefit the civil proceeding, which would not have existed in most other contexts of civil claims. That would not be the situation if the Plaintiff did not first focus on the *Police Act* complaint process.
>
> …
>
> A multitude of witness statements and other information relevant to the civil claims… evidence was captured and preserved at early stages.… now available to the parties to this legal proceeding, creates a situation where in fact the Defendants now get the benefit of that material.
>
> …
>
> [25] Those issues aside, the Plaintiff would also highlight that once current legal counsel was engaged, steps were immediately taken to move forward with the filing of the civil claims herein.
>
> [26] This first factor weighs in favour of the relief sought by the Plaintiff.
>
> …
>
> **12(5)(b) any information or notice given by the defendant to the claimant respecting the limitation period**.

It is understood that there was no information or notification given to the Plaintiff by any Defendant with respect to the alleged limitation period at an earlier stage. Accordingly, this factor too weighs in favour of the relief sought by the Plaintiff.

> **12(5)(c) the effect of the passage of time on:**
>
> > **i-the ability of the defendant to defend the claim, and**
> >
> > **ii-the cogency of any evidence adduced or likely to be adduced by the claimant or defendant**;

[At para 28, Chris references paragraphs 22 – 24, and argues that the passage of time as a result of the other investigations actually "enhanced the front-end position of each Defendant in terms of their ability to assess, defend and respond to any claim".]

> **12(5)(d) the conduct of the defendants after the claim was discovered**, including the extent, if any, to which the defendants responded to requests reasonably made by the claimant for information or inspection for the purpose of ascertaining facts that were or might be relevant to the claim.

[Chris says at para. 33 that "this factor has no bearing on this particular case…" [the Defendants Gary, CBRM/CBRPS] "have been well aware for years (including any arguable limitation period) that the Plaintiff's position was that actions of Gary Fraser were improper, and it should not have come as a surprise that civil claims would be asserted in connection with his wrongdoing. They could and should have been conducting themselves in ways to be prepared to respond to such claims ."]

> **12(5)(e) the duration of any incapacity of the claimant arising after the date on which the claim was discovered**.

[Chris states that: "We know of no issue in this case with respect to incapacity."]

> **12(5)(f) the extent to which the claimant acted promptly and reasonably once the claimant knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to a claim**.

[Chris relies on his arguments at paragraphs 20-1 and 25 in his Brief and says "… [that he] acted promptly in initiating a civil claim once current counsel was retained."]

> **12(5)(g) the steps, if any, taken by the claimant to obtain medical, legal or other expert advice and the nature of any such advice the claimant may have received**.
>
> [36] To the extent that this is a factor, it would seem to weigh in the Plaintiff's favour in that he did have some consultation with a lawyer and the understanding he had was that the path he was taking was appropriate in terms of first pursuing his complaints under the *Police Act* before turning his focus to civil claims. Whether there was any misunderstanding involved or not, does not impact the good faith and reasonableness of the Plaintiff in his approach.
>
> **12(5)(h) the strength of the claimant's case**
>
> [37] The Plaintiff submits that even the incomplete and high-level smattering of evidence which has been provided in the Plaintiff's affidavit establishes that he has legitimate claims for serious wrongdoing and harm that was precipitated upon him. That evidence shows the Gary Fraser acted improperly and wrongfully in detaining and interfering with the Plaintiff and that the warrantless arrest and detention was unlawful.… evidence in the Plaintiff's affidavit as to what TD Insurance held out

> in terms of commitment to pay for rental costs, which was then reneged upon, and which appeared to have triggered the sequence of events which followed.
>
> [40] Despite knowing this was a civil matter, Defendant Enterprise irresponsibly reported the subject rental vehicle stolen and between that step and the Defendant Benvie's false reporting of allegations to the police, actions were initiated that caused the very traumatizing and harmful events which have indeed harmed the Plaintiff.
>
> **12(5)(i) any alternative remedy or compensation available to the claimant**
>
> The Plaintiff does not know of any other means to recover damages for the injury he was subjected to in the course of the subject dealings.

[145] I have also considered the oral submissions throughout by all counsel.

The Position of the Defendants

[146] The Defendants **CBRM/CBRPS/(Gary)** stated in their September 23, 2024, brief:[24]

> **12(5)(a)-Length of delay**: In *HRM v. Carvery*, 2023 NSCA 79, the Court held that the importance of this factor will be greater in contexts where a shortened limitation period applies.… where a municipality is involved, which has a shorter limitations period, a shorter delay will be considered more significant and will weigh more heavily against the late filing plaintiff [paragraphs 37 – 38]. The Plaintiff missed the limitations period against CBRM by 19 months.
>
> **12(5)(b)-Notice by Defendant**: In *Carvery, supra*, the Court held that no defendant is obliged to advise the plaintiff about the limitation period or its impending expiry [paragraphs 39 – 41]; the purpose of the factor is to ascertain if the Plaintiff has been misinformed or misdirected by the defendant. The Plaintiff was not misdirected by the CBRM.
>
> **12(5)(c)-Effect of Passage of Time**: The Plaintiff himself admitted that his memory of certain events was affected by the passage of time.
>
> **12(5)(d)-Conduct of Defendant**: The CBRM had no interaction with the Plaintiff. Given the course of the disciplinary proceeding against its officer, the CBRM had no reason to believe further action would ensue. It has acted reasonably throughout.
>
> **12(5)(e)-Incapacity**: There was no period of incapacity.

[24] They also expressly rely on the reasons of the Court in *Yarmouth (District) v. Nickerson*, 2017 NSCA 21. I note that Gary filed his own briefs on January 22, 29, and September 25, 2024, regarding section 12 of the *LAA*. I have considered his position as set out therein, but because it tracks the position taken by CBRM/CBRPS, I will deal with them altogether.

12(5)(f)-Plaintiff promptness: The claim was discovered in October 2020 and the Plaintiff did not act promptly thereafter in relation to his tort rights; as the limitations period loomed in September 2021, rather than advance a civil claim, he chose instead to lodge a public complaint under the *Police Act*, triggering the disciplinary investigation.

12(5)(g)-Steps to Obtain Advice: Unlike *Loblaws* [*MacDonald v. Loblaws*, 2021 NSSC 267] *supra*, where details of the plaintiff's interactions with his lawyers were tendered, the Plaintiff has provided none other than the vague/surprising suggestion that his lawyer(s) told him to focus on the criminal and disciplinary matters at the expense of complying with the limitations.[25]

12(5)(h)-Strength of Case: The jurisprudence makes clear that evidence supporting the Plaintiff's *liability allegations and damages claims* is expected. The Plaintiff offered no liability evidence whatsoever in relation to his claims against the CBRM. While your Lordship suggested that the evidence available may be less voluminous or robust early in the proceeding, the reality is that the Plaintiff has had years to gather evidence and tender it, and he failed to do so. He even neglected to produce evidence on matters entirely within his capacity to secure (i.e. while he offered general assertions about the impact of the situation which he created on his well-being, he offered no documentary evidence of medical treatment, prescriptions, counselling, etc.). By contrast in *Saulnier*, *medical records were appended to the affidavit*.

12(5)(i)-Alternative Remedies or Compensation: if (g) is true, alternative remedies in addition to his public complaint are possible. This factor weighs against him.

As observed by the Defendants at the motion, the Plaintiff has failed to tender cogent, reliable and persuasive evidence in relation to most factors, and it is the application of the factors that determines hardship, not evidence of specific burdens to specific officers or actors. In situations where evidence may not have been lost – and that is not necessarily the case here – the other two rationales for limitations periods are still fully operative and weigh fatally against the Plaintiff.

My findings on the s. 12(5) factors, as they impact the s. 12(3) *LAA* assessment in all the circumstances

[147] As I have found that only the claims against CBRM/CBRPS and Gary need be addressed, I will not examine the positions of the other Defendants on these issues.

[148] A brief chronology is useful.

---

[25] Although, in effect he did say so, I did not understand Chris to go so far as to testify that he purposefully intended to deal with the criminal and disciplinary matters first, while knowingly not complying with the limitations' periods.

[149] Chris was arrested and charged on **October 28, 2020**.

[150] These *Criminal Code* charges were dismissed by the Provincial Court on **June 24, 2021**.

[151] On **September 8, 2021**, Chris filed his *Police Act* complaint against Gary-Exhibit "D" according to Inspector William Turner's affidavit.

[152] On or about **February 8, 2022**, **the Decision of the Police Authority**, following the investigation by Sgt. AJ MacIsaac, was rendered by Chief of Police delegate Superintendent Reginald Hutchings.

[153] The Superintendent agreed with Sgt. MacIsaac that:

> Under section 44 (2) of the *Nova Scotia Police Act's* Disciplinary Authority Decision … **there is evidence** on count **24(4)(a) ["a member who is deceitful in any of the following ways commits a disciplinary default**: wilfully or negligently making or signing a false, misleading or inaccurate written statement or entry, including by electronic means, in an official document or record"] – **Constable Fraser was found not to have recorded accurately what the arrest was for, perhaps because of not having sufficient notes of the arrest.** He also misstated the time at which he entered the lockup area and tried to call Legal Aid. Because Constable Fraser had notes of his discussions with Chief Hobeck and Ms. Benvie, Superintendent Hutchings found that Constable Fraser had not lied in relation to those instances for which he had a different recollection from that what was alleged in the complaint, so allegation six was not sustained.;
>
> AND
>
> **Section 24(3)(a)** ["**a member who neglects their duties in any of the following ways commits a disciplinary default**: neglecting to, without adequate reason, failing to promptly, properly or diligently perform a duty as a member"] – **Constable Fraser was found to have recorded aspects of the investigation inadequately, to have failed to take some statements in a timely way or at all, and to have failed to provide in a timely way disclosure of items requested by prosecutors** after the initial court appearance, resulting in the charges not proceeding, to support the allegation against Constable Gary Fraser concerning a breach of *Nova Scotia Police Act Regulations, Code of Conduct*.

[154] In relation to an assessment of the penalty the Superintendent stated in part: "**I consider the misconduct in this case to be serious**. I am confident when all penalty factors are measured and weighed, the proposed sanction will appropriately address the misconduct."

[155] Chris was provided a report by the Police Complaints Commissioner on or about **February 17, 2023**. **Chris had requested a "review" thereof** as he believed important issues had not been "properly addressed".

[156] The Complaints Commissioner (previously Chief Judge of the Provincial Court) Patrick Curran, referred Chris' complaint to the Nova Scotia Police Review Board on or about **March 3, 2023**.

[157] On **April 12, 2023**, Chris was served with Gary's **Notice of Judicial Review** seeking to overturn the referral to the Nova Scotia Police Review Board.

[158] Chris formally retained legal counsel Donn Fraser in April 2023 and sent a **Notice of Intended Legal Action to CBRM** on or about **April 17, 2023**.

[159] On **June 15, 2023**, Chris filed his **Statement of Claim** in the Pictou District of the Nova Scotia Supreme Court.

[160] Next, I will address the s.12(5) *LAA* factors.

12(5)(a)-the length of, and the reasons for, the claimant's delay in filing his Notice of Action

[161] The choices deliberately made by Chris, as a self-represented litigant, caused his filing of his Statement of Claim to be between 12 and 20 months after the limitation periods expired.

[162] In his affidavit Chris states:

> 23 On or [about] February 17, 2023, I received notice, a true copy of which is attached hereto at Exhibit "C", that the Nova Scotia Police Complaints Commissioner decided to refer to the Nova Scotia Police Review Board for hearing my complaint allegation around the issue the Nova Scotia Police Commissioner framed as follows:
>
> > That on October 28, 2020, at Sydney, Nova Scotia, Constable Gary Fraser of the Cape Breton Regional Police Service arrested Christopher Sampson for theft in relation to a civil dispute, thus making an arrest without good and sufficient cause and committing a disciplinary default contrary to section 24(7)(a) of the Code of Conduct in the Nova Scotia Police Regulations.

[163] The outcome of such a hearing could reasonably have been that Gary illegally arrested Chris.

[164] The reasons given are that Chris was diligent generally about pursuing his potential claims, but specifically he decided to engage the *Police Act* complaint process first on or about September 7, 2021, and waited for it to run its course, including the ensuing Notice of Judicial Review, which was served on him on or about April 12, 2023.

[165] This factor weighs against Chris.

12(5)(b)–any information or notice given by the Defendants to Chris regarding the limitation period

[166] The Defendants had no legal obligation to give notice of the limitation periods to Chris, and them having not done so is a neutral factor.

12(5)(c)-the effect of the passage of time on the ability of the Defendants to defend the claim, and the cogency of any evidence adduced or likely to be adduced by any of the parties

[167] Given that the *Police Act* complaint largely addresses similar factual issues as the civil litigation involving the remaining parties, and the Defendants would have been aware of Chris' positions thereon by virtue of their involvement therein, they were in large measure provided an understanding of what would likely be his position should the civil litigation suit proceed.

[168] He did advise them on or about April 13, 2023, that he would be commencing the civil suit.

[169] The Defendants had counsel representing them, whereas at the relevant times Chris was self represented until April 2023.

[170] I find this to be a neutral factor generally as between the parties.

[171] The claims here are generally straightforward, and I accept that the *Police Act* complaint process did provide significant insights into the circumstances of the claims for all parties.

[172] There is no material prejudice to any of the Defendants by the late filing of Chris' statement of claim.

12(5)(d)-the conduct of the defendants after the claim was discovered

[173] I find this to be a neutral factor generally as between the parties, particularly given the *Police Act* complaint process, including the attempt to engage the judicial review process.[26]

12(5)(e)-any period of incapacity

[174] This factor is inapplicable in present circumstances.

12(5)(f)-the extent to which the claimant acted promptly and reasonably

[175] Once he knew whether the Defendants' conduct to which he says his injuries are attributable, might be capable at that time of giving rise to a claim, the limitation periods began to run.[27] I accept that Chris did not turn his mind, until he consulted Donn Fraser, to such an impediment to his entitlement to sue the Defendants, who had the benefit of the one-year limitation period under the *Municipal Government Act*, which is not expressly mentioned in the *LAA*. Is it reasonable that Chris, as a self-represented, diligent individual was not aware of the relevant provisions of the *Municipal Government Act*.

[176] Moreover, the relevant issues in the *Police Act* complaint could reasonably have been expected to have had a material impact on the civil litigation issues.[28]

[177] I conclude that Chris was acting as he sincerely believed was in his overall best interests, and while he made a choice to pursue the *Police Act* process earlier,

[26] As of June 6, 2023 Gary was concurrently in the process of causing his own Judicial Review of the *Police Act* proceedings to be delayed, by adding a constitutionality argument regarding s. 10 of the *Police Act* – see Tab H of Chris' affidavit.

[27] Section 8(2) *LAA* states in part: "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."

[28] I am also satisfied that Chris more likely than not has had limited financial means at all relevant times. Thus, if he had hired legal counsel to commence a civil litigation on his behalf as against the five different Defendants much earlier than he did in 2023, unless perhaps it were on a contingency basis, which I infer would be unlikely, he would have found it very difficult to sustain the payment of costs of counsel hired to assist him throughout this civil litigation process.

he was reasonably diligent in that respect, and generally he acted in a reasonable manner in all the circumstances.

[178] Chris reasonably, yet mistakenly, proceeded as he did, when he unknowingly deferred the commencement of the civil litigation, but one cannot say he "promptly" commenced that litigation once he knew that the Defendant's conduct "might be capable of giving rise to a claim".

[179] This factor weighs against Chris, but only to a modest extent.

12(5)(g)-the steps taken by Chris to obtain "medical, legal or other expert advice and the nature of any such advice he received"

[180] There is no evidence that Chris received any expert medical advice regarding the status of his claimed "personal injuries".

[181] There is persuasive evidence that Chris did attempt to receive, and likely received, some legal advice.

[182] Sometime after the criminal charges were dismissed in June 2021, I find that he did superficially consult with a senior Halifax counsel James Giacomantonio, as well as a lawyer at MacGillivray Law in New Glasgow, before he ultimately hired Donn Fraser in April 2023.

[183] I bear in mind here too that s. 12(6) *LAA* states:

> A court may not exercise the jurisdiction conferred by this Section, if the claim is brought two years after the expiry of the limitation period applicable to that claim.

[184] The legislation itself sets a "no-exceptions" two-year further limitation period extension which would unquestionably preclude Chris from taking advantage of s. 12 *LAA*. This provision underlines the length of time the Legislature considered to be a truly final date for filing any claim, no matter how meritorious or serious.

[185] I also appreciate that such ongoing litigation will weigh heavily on both individuals directly affected thereby: Chris Sampson and Gary Fraser.

[186] This factor modestly favours Chris.

12(5(h)-the strength of the claimant's case

[187] Chris' claims against Gary/CBRM/CBRPS are sufficiently robust to characterize them as tending to be a factor favouring Chris' position.

12(5)(i)-any alternative remedy or compensation available to the claimant

[188] There is no realistic alternative. This factor favours Chris.

[189] If the litigation is terminated, the hardship to Chris will be substantial.

Conclusion

[190] What then do I conclude from an examination of all the circumstances, through the lens of the factors and the jurisprudence which directs me how to approach the assessment required by s. 12(3) *LAA*?

[191] I find it is "just" to disallow the limitation period defences raised herein given a consideration of the competing hardships that would be visited upon the Defendants CBRM/CBRPS/Gary in that case, and the hardship that would be visited upon Chris if I denied his motion.

Costs

[192] If the parties cannot agree on costs of this motion, I will receive briefs to a maximum of five pages each, with Chris' brief being due 20 days after the release of this Decision, the Defendants' due 15 days thereafter, and, if so desired, Chris may file a reply within a further 10 days of receipt of the Defendants' briefs.

Rosinski J.