

SCC Court File No.

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM A JUDGMENT OF THE BRITISH COLUMBIA COURT OF APPEAL)

B E T W E E N :

**PIONEER CORPORATION, PIONEER NORTH AMERICA, INC., PIONEER
ELECTRONICS (USA) INC., PIONEER HIGH FIDELITY TAIWAN CO., LTD. and
PIONEER ELECTRONICS OF CANADA INC.**

APPLICANTS (Defendants)

- and -

NEIL GODFREY

RESPONDENT (Plaintiff)

APPLICATION FOR LEAVE TO APPEAL

(PIONEER CORPORATION, PIONEER NORTH AMERICA, INC., PIONEER
ELECTRONICS (USA) INC., PIONEER HIGH FIDELITY TAIWAN CO., LTD. and
PIONEER ELECTRONICS OF CANADA INC., APPLICANTS)

(Pursuant to Section 40 of the *Supreme Court Act*, R.S.C. 1985, c. S-26, as amended, and Rule
25 of the *Rules of the Supreme Court of Canada*)

AFFLECK GREENE McMURTRY LLP

365 Bay Street, Suite 200
Toronto, ON M5H 2V1

W. Michael G. Osborne

Tel.: (416) 360-5919
Fax: (416) 360-5919
Email: mosborne@agmlawyers.com

**Counsel for Applicants, Pioneer
Corporation, Pioneer North America, Inc.,
Pioneer Electronics (USA) Inc., Pioneer
High Fidelity Taiwan Co., Ltd. and Pioneer
Electronics of Canada Inc.**

SUPREME ADVOCACY LLP

100-340 Gilmour St.
Ottawa ON K2P 0R3

Marie-France Major

Tel: 613-695-8855
Fax: 613-695-85-80
Email: mfmajor@supremeadvocacy.ca

**Agent for Counsel for the Applicants,
Pioneer Corporation, Pioneer North
America, Inc., Pioneer Electronics (USA)
Inc., Pioneer High Fidelity Taiwan Co.,
Ltd. and Pioneer Electronics of Canada Inc**

**CAMP FIORANTE MATTHEWS
MOGERMAN**
400-856 Homer Street
Vancouver, BC V6B 2W5

Reidar Mogerman
David Jones
Morgan Andersen
Michelle Segal
Tel: (604) 689-7555
Fax: (604) 689-7554
Email: rmogerman@cfmlawyers.ca

Counsel for the Respondent, Neil Godfrey

MICHAEL SOBKIN
Barrister & Solicitor
331 Somerset Street West
Ottawa, ON K2P 0J8

Michael Sobkin
Tel: (613) 282-1712
Fax: (613) 288-2896
Email: msobkin@sympatico.ca

**Agent for Counsel for the Respondent, Neil
Godfrey**

TABLE OF CONTENTS

<u>TAB</u>	<u>PAGE</u>
1. Notice of Application for Leave to Appeal	1
2. Judgments and Reasons for Judgments Below	7
A. Reasons for Judgment Supreme Court of British Columbia, dated May 13, 2016.....	7
B. Reasons for Judgment Court of Appeal for British Columbia, dated August 18, 2017.....	70
3. Memorandum of Argument	148
PART I – OVERVIEW AND STATEMENT OF FACTS.....	148
PART II - QUESTIONS IN ISSUE.....	150
PART III - STATEMENT OF ARGUMENT	150
A. Does the discoverability rule apply to the limitation period contained in the statutory cause of action in s. 36 of the Competition Act?	150
1. The BC Court of Appeal applied a new test to determine whether discoverability applied	151
a. <i>The limitation period in s. 36(4) runs from a fixed event unrelated to the injured party’s knowledge</i>	151
b. <i>The new test</i>	152
c. <i>The new test replaces and significantly expands the test adopted by this Court</i>	154
2. National importance.....	155
B. Can fraudulent concealment apply in the absence of any special relationship?.....	159
1. Special relationship is the foundation of fraudulent concealment	159
2. National importance.....	160
PART IV - COSTS	161
PART V - ORDERS SOUGHT	162
PART VI - TABLE OF AUTHORITIES	163
PART VII - STATUTES	164

PIONEER'S MEMORANDUM OF ARGUMENT

PART I – OVERVIEW AND STATEMENT OF FACTS

1. Pioneer¹ adopts the submissions of Panasonic² in its Memorandum of Argument in support of the joint application for leave to appeal filed on behalf of many of the defendants, and requests that this application for leave to appeal be considered together with Panasonic's application.

2. Pioneer's proposed appeal raises two issues of national importance that are unique to the case against Pioneer:

- a) Does the discoverability rule apply to the limitation period contained in the statutory cause of action in s. 36 of the *Competition Act*?
- b) Can fraudulent concealment toll the limitation period in s. 36 of the *Competition Act* in the absence of any special relationship?

3. Because the plaintiff filed its Notice of Civil Action against Pioneer more than three years after the end of the conspiracy alleged by the plaintiff, the two year limitation period set out in s. 36(4) of the *Competition Act*³ had expired, unless it was tolled by discoverability or fraudulent concealment.

4. The s. 36(4) limitation period begins to run from the date of the unlawful conduct, which is an event that is unrelated to the injured party's knowledge. Under the test laid down by this Court in *Peixeiro v. Haberman*,⁴ discoverability ought not to apply. Despite this, the British Columbia Court of Appeal held that it was not plain and obvious that discoverability does not apply to s. 36(4). The court reached this conclusion by applying a new and different test from the one mandated by this Court. Under this test, where time runs from an event that is related to the

¹ Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics (USA) Inc., Pioneer High Fidelity Taiwan Co., Ltd. and Pioneer Electronics of Canada Inc.

² Panasonic Corporation, Panasonic Corporation of North America and Panasonic Canada Inc.

³ *Competition Act*, RSC 1985, c C-34

⁴ [Peixeiro v. Haberman, \[1997\] 3 S.C.R. 549](#)

basis of the cause of action, discoverability applies, even if the event is unrelated to the injured party's knowledge. As a result, this new test directly contradicts the test in *Peixeiro*.

5. The existence of a “special relationship” is the very foundation of the doctrine of fraudulent concealment. Yet the BC Court of Appeal suggested that a special relationship was not needed for the doctrine to apply, and concluded that it was not plain and obvious that fraudulent concealment does not toll the s. 36(4) limitation period.

6. The changes to the test for discoverability and fraudulent concealment have important implications both for the development of competition law in Canada, and, more broadly, for the doctrines of discoverability and fraudulent concealment themselves.

7. Limitation issues frequently arise in s. 36 private actions alleging conspiracies. Applying the discoverability and fraudulent concealment to the limitation period in s. 36(4) fundamentally changes that limitation period from the short two year period contemplated by Parliament to one that is potentially limitless.

8. This risks upsetting the balance created by Parliament in enacting s. 36(4). The *Competition Act* contains a comprehensive scheme of economic regulation that includes a civil cause of action that has been carefully circumscribed by Parliament. The BC Court of Appeal has substituted its own judgment for that of Parliament on policy issues relating to this cause of action. This proposed appeal thus involves a consideration of the respective roles of Parliament and the courts in the development of competition policy.

9. The limitation period in s. 36(4) of the *Competition Act* – a federal statute – is now subject to different interpretations in different parts of Canada. In BC and Ontario, discoverability applies. In Alberta and the Federal Court, it does not. Similarly, conflicting decisions mean that fraudulent concealment tolls the s. 36(4) limitation in BC, but not in Ontario.

10. More broadly still, the new test for discoverability adopted by the BC (and Ontario) Courts of Appeal also has the potential to impact limitation periods in a number of federal and provincial statutes that, like the limitation in s. 36(4), run from a fixed event without regard to the injured party's knowledge.

PART II – QUESTIONS IN ISSUE

11. Pioneer adopts the statement of the questions in issue set out the Memorandum of Argument filed in support of the joint application by Panasonic and several other defendants.
12. The proposed appeal by Pioneer raises two additional questions of national importance:
 - a) Does the discoverability rule apply to the limitation period contained in the statutory cause of action in s. 36 of the *Competition Act*?
 - b) Can fraudulent concealment toll the limitation period in s. 36 of the *Competition Act* in the absence of any special relationship?

PART III – STATEMENT OF ARGUMENT

13. Pioneer adopts the submissions in Memorandum of Argument filed in support of the joint application by Panasonic and several other defendants.
14. These submissions therefore only address the two issues raised by Pioneer's proposed appeal.
 - A. Does the discoverability rule apply to the limitation period contained in the statutory cause of action in s. 36 of the *Competition Act*?**
15. This proposed appeal raises the important issue of whether the discoverability rule applies to the limitation period contained within statutory cause of action created by s. 36 of the *Competition Act*.
16. In finding that discoverability applies to the s. 36 limitation period, the BC Court of Appeal applied a new test for determining whether the discoverability rule applies. As set out below, this new test is inconsistent with the test laid down by this Court in *Peixeiro*.
17. There are, moreover, conflicting decisions amongst courts of appeal and superior courts on the issue of whether discoverability applies to the s. 36 limitation period.

1. The BC Court of Appeal applied a new test to determine whether discoverability applied

a) *The limitation period in s. 36(4) runs from a fixed event unrelated to the injured party's knowledge*

18. Until the decision of the BC Court of Appeal in this case, and the prior decision of the Ontario Court of Appeal in the LCD case,⁵ the test for determining when the discoverability rule applies to a limitation period was well-established. The test was adopted by this Court from *Fehr v. Jacob*⁶ in *Peixeiro v. Haberman*,⁷ and was recently confirmed in *Ryan v. Moore*.⁸ It is as follows:

When time runs from “the accrual of the cause of action” or from some other event which can be construed as occurring only when the injured party has knowledge of the injury sustained, the judge-made discoverability rule applies. But, when time runs from an event which clearly occurs without regard to the injured party's knowledge, the judge-made discoverability rule may not extend the period the legislature has prescribed. [Emphasis added]⁹

19. The limitation period in the *Competition Act's* statutory cause of action (s. 36(4)) clearly comes within the second branch of this test: it runs from an event which clearly occurs without regard to the injured party's knowledge, that is, “a day on which the conduct was engaged in”:

Limitation

(4) No action may be brought under subsection (1),

(a) in the case of an action based on conduct that is contrary to any provision of Part VI, after two years from

(i) a day on which the conduct

Restriction

(4) Les actions visées au paragraphe (1) se prescrivent :

a) dans le cas de celles qui sont fondées sur un comportement qui va à l'encontre d'une disposition de la partie VI, dans les deux ans qui suivent la dernière des dates suivantes :

⁵ [Fanshawe College of Applied Arts and Technology v. AU Optronics Corp.](#), 2016 ONCA 621 (“LCD”)

⁶ [Fehr v. Jacob](#), [1993] 5 WWR 1, [1993] MJ No 135

⁷ [Peixeiro v. Haberman](#), [1997] 3 SCR 549

⁸ [Ryan v. Moore](#), 2005 SCC 38

⁹ See [Peixeiro v. Haberman](#), ¶37, quoting from [Fehr v. Jacob](#).

was engaged in, or (i) soit la date du
comportement en question,
(ii) the day on which any criminal proceedings relating thereto were finally disposed of, (ii) soit la date où il est statué de façon définitive sur la poursuite;

whichever is the later;

[Emphasis added]

b) *The new test*

20. In this case, however, the BC Court of Appeal has adopted a new test that directly contradicts the test laid down by this Court in *Peixeiro* and confirmed in *Ryan*. This new test comes from the Ontario Court of Appeal’s decision in LCD.

21. The Ontario Court of Appeal developed this new test by misreading the following passage from *Ryan*:

24 Thus, the Court of Appeal of Newfoundland and Labrador is correct in stating that the rule is “generally” applicable where the commencement of the limitation period is related by the legislation to the arising or accrual of the cause of action. The law does not permit resort to the judge-made discoverability rule when the limitation period is explicitly linked by the governing legislation to a fixed event unrelated to the injured party’s knowledge or the basis of the cause of action (see Mew, at p. 55). [Emphasis added]¹⁰

22. The BC Court of Appeal, in this case, and the Ontario Court of Appeal, in LCD, relied on the words “or the basis of the cause of action” in underlined passage to hold that the discoverability rule applies to the limitation period in s. 36(4) of the *Competition Act*, even though it clearly falls within the second branch of the *Peixeiro* test, that is, it begins to run from a fixed event unrelated to the injured party’s knowledge. These courts held that discoverability applies because the event that triggers the limitation period in s. 36(4), namely, the unlawful conduct, is related to the basis of the cause of action.

¹⁰ [Ryan v. Moore](#), ¶24

23. However, the passage from *Ryan* quoted above follows a reaffirmation by this Court of the test first adopted in *Peixeiro*. Nothing in *Ryan* suggests that this Court intended to modify the *Peixeiro* test, much less radically change it. Indeed, the underlined portion of the passage from *Ryan* expressly reaffirms that discoverability *does not apply where the limitation period begins to run from a fixed event unrelated to the injured party's knowledge*. The remainder of the passage adds that the rule does *not* apply where the triggering event is “unrelated to the basis of the cause of action”. If this addition is intended to modify the *Peixeiro* test (which seems unlikely), at most it might be taken to introduce an additional situation where the discoverability rule would *not* apply.

24. The BC and Ontario courts erred by assuming that if discoverability does not apply where the triggering event is unrelated to the basis of the cause of action, then it *does* apply if the triggering event is related to the basis of the cause of action.

25. This simply does not follow. The fact that discoverability does *not* apply where the triggering event is unrelated to the basis of the cause of action does not logically imply that it *does* apply where the triggering event is so related.

26. Having made this error in logic, the BC and Ontario courts of appeal went a step further, holding that discoverability applies if the triggering event is related to the basis of the cause of action, even if it is a fixed event unrelated to the injured party's knowledge. In this way, these courts directly contradicted this Court's reaffirmation in *Ryan* of the principle that discoverability does *not* apply where time runs from a fixed event unrelated to the injured party's knowledge.

27. Remarkably, the BC Court of Appeal even ascribed this error to this Court:

I do not think it open to this court to call into question the Supreme Court's unequivocal statement in *Ryan*, that the rule can apply where the limitation period is linked to “the basis of the cause of action”...¹¹ [Emphasis added]

¹¹ BCCA Decision, ¶89.

28. This Court did not make the statement attributed to it in the passage above. What this Court did in *Ryan* was to reaffirm, unequivocally, that discoverability does not apply where time runs from a fixed event unrelated to the injured party's knowledge.

c) *The new test replaces and significantly expands the test adopted by this Court*

29. This new test for discoverability effectively replaces the test adopted by this Court in *Peixeiro* and greatly expands the application of the discoverability rule. Under this new rule, only limitation periods that have nothing to do with the cause of action, such as survival of actions (as in *Ryan v. Moore*) are not subject to discoverability. Discoverability applies to all other limitation periods, even those that run from a fixed event unrelated to the injured party's knowledge.

30. The extent of the change is apparent from a consideration of two cases where the discoverability issue would be decided differently under the new test.

31. *Fehr v. Jacob* itself would have been decided differently under this new test. *Fehr* was a medical malpractice case. The triggering event for the limitation period was the date when professional services terminated. Discoverability did not apply, because this was a fixed event unrelated to Mr. Fehr's knowledge. Under the new test, discoverability would apply, since time ran from an event that was related to the basis of the cause of action.

32. *Canadian Imperial Bank of Commerce v. Green*: this case dealt with the limitation period in Ontario's secondary market liability provisions, which runs from the date on which the document containing the misrepresentation was first released. Although discoverability was not at issue, Côté J., writing for the majority on limitation issues, noted that the limitation period in Ontario's secondary market liability provisions "begins to run regardless of the knowledge on the plaintiff's part".¹² However, since the event that triggers the running of that limitation period is related to the basis of the cause of action, discoverability would now apply under this new test.

¹² [*Canadian Imperial Bank of Commerce v. Green*](#), 2015 SCC 60 at ¶79.

2. National importance

33. The issue of whether the *Peixeiro* test ought to be replaced by a new and expanded test that makes the discoverability rule applicable to s. 36(4) is an issue that ought to be decided by this Court by reason of its public importance, for the following reasons.

34. First, the *Competition Act*'s statutory cause of action and the limitation period it contains is of national importance. The *Competition Act* contains a comprehensive scheme of economic regulation¹³ that applies to every person or entity engaged in business in Canada. Section 36 actions are increasingly common in Canada, and often raise limitation issues, including whether discoverability applies.

35. Second, there is disagreement amongst superior courts and courts of appeal across the country on the issue of whether discoverability applies to s. 36(4):

- a) British Columbia: the Court of Appeal held in this case that discoverability applies.
- b) Alberta: the Court of Appeal recently held that “With respect to the claim under s 36 of the *Competition Act*, ... time runs from the conduct, not discoverability”.¹⁴
- c) Ontario: in LCD, the Court of Appeal held that discoverability applies. Prior to that, Superior Court Justice Strathy (as he then was) held that discoverability does not apply to s. 36(4).¹⁵
- d) Federal: the Federal Court has held that discoverability does not apply to s. 36(4).¹⁶ The Federal Court of Appeal has yet to decide the issue.¹⁷

¹³ [*General Motors of Canada Ltd. v. City National Leasing Ltd.*](#), [1989] 1 SCR 641 at ¶82

¹⁴ [*CCS Corp. v. Secure Energy Services Inc.*](#), [2014] AJ No. 225

¹⁵ [*Fairview Donut Inc. v. The TDL Group Corp.*](#), 2012 ONSC 1252 at ¶647

¹⁶ [*Garford Pty Ltd v. Dywidag Systems International, Canada, Ltd.*](#), 2010 FC 996 at ¶28ff; [*Les Laboratoires Servier v. Apotex Inc.*](#), 2008 FC 825 at ¶488; see also [*Eli Lilly and Company v. Apotex Inc.*](#), 2009 FC 991 at ¶729, where the court held that the limitation period expired two years after the conduct had occurred.

- e) Quebec: in *Infineon Technologies AG v. Option consommateurs*, this court noted the finding in the Quebec Superior Court that the plaintiff's s. 36 action was statute-barred.¹⁸ However, the point does not appear to have been argued there, as the plaintiff admitted that the action was statute-barred.¹⁹

36. In the result, this federal statute is now subject to different interpretations in different parts of the country.

37. Third, this new test will have an impact on at least 14 other statutory causes of action that contain limitations periods that, like s. 36(4), begin to run from a fixed event without regard to the injured party's knowledge, but which are also related to the basis of the cause of action. Some examples include:

<i>Statute</i>	<i>Cause of Action</i>	<i>Limitation runs from</i>
<i>Patent Act</i> , s. 55.01 ²⁰	Patent infringement action	Date of act of infringement
<i>Industrial Design Act</i> , s. 18 ²¹	Industrial design infringement action	Date of act of infringement
<i>Radiocommunication Act</i> , s. 18 & 19 ²²	Action for damages for conduct contrary to s. 9(1)(c) and s. 9(1.1)	The date the conduct giving rise to the action was engaged in
<i>Telecommunications Act</i> , s. 72 ²³	Action for loss or damages for act or omission contrary to the Act	The day on which the act or omission occurred

¹⁷ In *Garford Pty Ltd v. Dywidag Systems International, Canada, Ltd*, 2012 FCA 48, the Federal Court of Appeal declined to decide the discoverability issue as the rule would not have assisted the plaintiff.

¹⁸ *Infineon Technologies AG v. Option consommateurs*, 2013 SCC 59 at ¶19.

¹⁹ *Option Consommateurs c. Infineon Technologies, a.g.*, 2008 QCCS 2781 at ¶198

²⁰ RSC 1985, c P-4

²¹ RSC 1985, c I-9

²² RSC 1985, c R-2

²³ SC 1993, c 38

<i>Statute</i>	<i>Cause of Action</i>	<i>Limitation runs from</i>
<i>Bank Act</i> , s. 76 ²⁴	Action to compel shareholder or other person to pay money or return property improperly paid or distributed as a consequence of reduction of capital contrary to s. 75	The date of the act complained of
<i>Canada Business Corporations Act</i> , s. 38(5) ²⁵	Claim against shareholder for amount of liability reduced as a result of reduction of stated capital contrary to s. 38 of the Act	The date of the act complained of
<i>Cooperative Credit Associations Act</i> , s. 83(3) ²⁶	Action by creditor for money paid to a member as a consequence of reduction of capital contrary to s. 82	The date of the act complained of
<i>Insurance Companies Act</i> , s. 80(3), s.758(1) ²⁷	Action by creditor for money paid to a shareholder as a consequence of reduction of capital contrary to s. 79	The date of the act complained of
<i>Trust and Loan Companies Act</i> , s. 79(3) ²⁸	Action by creditor for money paid to a shareholder as a consequence of reduction of capital contrary to s. 78	The date of the act complained of
<i>Employment Insurance Act</i> , s. 46.1 ²⁹	Action to recover penalties imposed on corporation from directors of the corporation	Day on which the act or omission for which a penalty is imposed occurred

²⁴ SC 1991, c 46

²⁵ RSC 1985, c C-44

²⁶ SC 1991, c 48

²⁷ SC 1991, c 47

²⁸ SC 1991, c 45

²⁹ SC 1996, c 23

<i>Statute</i>	<i>Cause of Action</i>	<i>Limitation runs from</i>
<i>Canadian Human Rights Act</i> , s. 41 ³⁰	Complaint to Human Rights Commission	The last occurrence of the acts or commissions complained of
<i>Securities Act</i> , s. 138 (Ontario) ³¹	Action for rescission or damages for misrepresentation in a prospectus (s. 130), offering memorandum (s. 130.1), or take-over bid circular (s. 131)	Action for rescission and ultimate limitation for actions for damages, from the date of the transaction
<i>Securities Act</i> , 138.14 (Ontario) ³²	Secondary market liability – action for damages for misrepresentation in a document released by responsible issuer, oral statements by responsible issuer, etc. (s. 138.3)	Date of release of document, issuance of news release, making of oral statement, etc.
<i>Residential Tenancies Act</i> , s. 29 (Ontario) ³³	Tenant application to Board	The day the conduct giving rise to the application occurred

38. Fourth, while most provincial limitations statutes now codify the discoverability rule, some provincial limitations provisions relating to defamation continue to run from a fixed event without regard to the injured party's knowledge. In particular, Manitoba, Yukon, Northwest Territories, and Nunavut's limitations statutes provide that actions for defamation shall be commenced "within two years of the publication of the defamatory matter, or, where special damage is the gist of the action, within two years after the occurrence of such damage".³⁴

³⁰ RSC 1985 c H-6

³¹ RSO 1990, c S.5

³² This limitation period was considered in *CIBC v. Green*. See paragraph 32 above.

³³ 2006, c. 17, s. 29 (2)

³⁴ The quotation is from *The Limitation of Actions Act*, CCSM c L150, s 2(1). Yukon, Northwest Territories, and Nunavut all substantively the same provision, albeit with slightly different

39. Fifth, this issue raises an important issue that is also raised by Panasonic’s proposed appeal: respect for Parliamentary supremacy and Parliament’s choice of remedies in the context of a policy area that is entirely statutory, namely competition law. Section 36 creates a statutory cause of action for wrongs that are themselves created by statute. Price fixing conspiracies are only unlawful because s. 45 of the *Competition Act* makes them unlawful. In creating a civil cause of action for this statutory wrong, Parliament chose to embed certain restrictions in it, including a limitation period that was much shorter than limitation periods then typically in effect for common law causes of action. In this case, the BC Court of Appeal has wrongly arrogated to itself the jurisdiction to second-guess Parliament’s choice.

B. Can fraudulent concealment toll the limitation period in s. 36 of the *Competition Act* in the absence of any special relationship?

1. Special relationship is the foundation of fraudulent concealment

40. The BC Court of Appeal held that it was not plain and obvious that the doctrine of fraudulent concealment cannot toll the s. 36(4) limitation period in the absence of any special relationship between the plaintiff and the defendants.

41. The existence of a special relationship is the very foundation of the fraudulent concealment doctrine. In *Guerin v. The Queen*, Dickson J., writing for the majority, observed:

40 Nevertheless, there was a concealment amounting to equitable fraud. It was “conduct which, having regard to some special relationship between the two parties concerned, is an unconscionable thing for the one to do towards the other” (*Kitchen v. Royal Air Force Association*, [1958] 1 W.L.R. 563, per Lord Evershed M.R., at p. 573).³⁵

42. In *M. (K.) v. M. (H.)*, after citing the passage from *Kitchen* that Dickson J. had relied on, this Court characterized the need for a “special relationship” as an “important restriction” on the doctrine of fraudulent concealment:

wording: *Limitation of Actions Act*, RSNWT 1988, c. L-8, s 2(1)(c) (also in force in Nunavut); *Limitation of Actions Act*, RSY 2002, c. 139, s 2(1)(c).

³⁵ [*Guerin v. The Queen*](#), [1984] 2 SCR 335 at ¶40 (p. 390)

65 There is an important restriction to the scope of fraudulent concealment, which Halsbury's, 4th ed., vol. 28, para. 919, at p. 413, describes as follows:

In order to constitute such a fraudulent concealment as would, in equity, take a case out of the effect of the statute of limitation, it was not enough that there should be merely a tortious act unknown to the injured party, or enjoyment of property without title, while the rightful owner was ignorant of his right; there had to be some abuse of a confidential position, some intentional imposition, or some deliberate concealment of facts. [Emphasis added]³⁶

43. More recently, the Ontario Court of Appeal restated the doctrine in *Giroux Estate v. Trillium Health Centre* as follows:

Stated succinctly, it is aimed at preventing unscrupulous defendants who stand in a special relationship with the injured party from using a limitation provision as an instrument of fraud.³⁷

44. In *Fairview Donut*, Strathy J. applied *Giroux*, holding that fraudulent concealment could not extend the s. 36(4) limitation period because there was no basis to conclude that Tim Hortons had engaged in conduct like that of the physician in *Giroux*.³⁸

2. National importance

45. The issue of whether fraudulent concealment can toll the s. 36(4) limitation period in the absence of a special relationship is of national importance, for the following reasons.

46. First, removing the requirement for a special relationship fundamentally alters the doctrine.

47. Second, if secrecy in a price fixing conspiracy constitutes fraudulent concealment and tolls the s. 36(4) limitation period, then the doctrine would apply to nearly every private action alleging a price fixing conspiracy, because it is almost axiomatic that price fixing conspiracies take place in secret. As early as 1951, courts recognized the secret nature of conspiracies:

³⁶ [M \(K\) v. M \(H\), \[1992\] 3 SCR 6 at ¶65.](#)

³⁷ [Giroux Estate v. Trillium Health Centre](#), [2005] O.J. No 226 (CA) at ¶29 (“*Giroux*”).

³⁸ [Fairview Donut](#) at ¶649.

There is no cause for surprise that one does not find in the minute books the text of the agreements or arrangements which could have been made by defendants. In the case of such offences one seldom finds, if ever, concrete, clear-cut evidence of agreements the purpose of which is to create a monopoly or to operate it.³⁹

48. In the result, Parliament's policy choice in enacting the s. 36(4) limitation period would be largely negated, at least in price fixing cases.

49. Third, there is now a disagreement between courts within Canada on the issue of whether fraudulent concealment requires a special relationship. The position of the BC Court of Appeal appears to be that it does not.

50. In Ontario, fraudulent concealment still requires a special relationship, as *Giroux* remains good law there, and was applied to s. 36(4) in *Fairview Donut*.

51. Fourth, this issue also raises the same issue of respect for Parliament's policy choice in enacting a civil cause of action with a short limitation period for certain statutory wrongs contained in the *Competition Act*.

PART IV – COSTS

52. No costs were ordered below because BC's *Class Proceedings Act* provides for a no-costs regime. Accordingly Pioneer is not seeking costs in this leave application.

³⁹ *R. v. Eddy Match Company Ltd.*, (1951), 13 CPR 217, as cited in [R. v. Canada Packers Inc.](#), 1988 CanLII 3796.

PART V – ORDERS SOUGHT

53. Pioneer seeks the following orders:

- a) An order granting leave to appeal.
- b) An order that Pioneer's appeal shall be consolidated with Panasonic's appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of October 2017



W. Michael G. Osborne
Counsel for the Applicant

PART VI – TABLE OF AUTHORITIES

1.	<u>Canadian Imperial Bank of Commerce v. Green, 2015 SCC 60</u>	32, 37
2.	<u>CCS Corp. v. Secure Energy Services Inc., [2014] AJ No. 225</u>	35
3.	<u>Eli Lily and Company v. Apotex Inc, 2009 FC 991</u>	35
4.	<u>Fairview Donut Inc. v. The TDL Group Corp., 2012 ONSC 1252</u>	44, 50
5.	<u>Fanshawe College of Applied Arts and Technology v. AU Optronics Corp, 2016 ONCA 621</u>	18, 22, 35
6.	<u>Fehr v. Jacob, [1993] 5 WWR 1, [1993] MJ No 135</u>	18, 31
7.	<u>Garford Pty Ltd v. Dywidag Systems International, Canada, Ltd, 2010 FC 996</u>	35
8.	<u>Garford Pty Ltd v. Dywidag Systems International, Canada, Ltd, 2012 FCA 48</u>	35
9.	<u>General Motors of Canada Ltd. v. City National Leasing Ltd., [1989] 1 SCR 641</u>	34,
10.	<u>Giroux Estate v. Trillium Health Centre, [2005] OJ No 226 (CA)</u>	43, 44
11.	<u>Guerin v. The Queen, [1984] 2 SCR 335</u>	41
12.	<u>Infineon Technologies AG v. Option consommateurs, 2013 SCC 59</u>	35.e)
13.	<u>Les Laboratoires Servier v. Apotex Inc, 2008 FC 825</u>	35
14.	<u>M (K) v. M (H), [1992] 3 SCR 6</u>	42
15.	<u>Option Consommateurs c. Infineon Technologies, a.g., 2008 QCCS 2781</u>	35
16.	<u>Peixeiro v. Haberman, [1997] 3 SCR 549</u>	4, 16, 18, 20, 22, 23, 29, 33
17.	<u>R. v. Canada Packers Inc., 1988 CanLII 3796 (AB QB)</u>	47
18.	<u>Ryan v. Moore, 2005 SCC 38</u>	18, 20, 21, 23, 26, 27, 28, 29

PART VII – STATUTES

Bank Act, SC 1991, c 46, s. 76

Recovery by action

76 (1) If any money or property was paid or distributed to a shareholder, member or other person as a consequence of a reduction of capital made contrary to section 75, a creditor of the bank may apply to a court for an order compelling the shareholder, member or other person to pay the money or deliver the property to the bank.

Shares and membership shares held by personal representative

(2) No person holding shares or membership shares in the capacity of a personal representative and registered on the records of the bank as a shareholder or member and described in those records as the personal representative of a named person is personally liable under subsection (1), but the named person is subject to all the liabilities imposed by that subsection.

Limitation

(3) An action to enforce a liability imposed by subsection (1) may not be commenced more than two years after the date of the act complained of.

Remedy preserved

(4) This section does not affect any liability that arises under section 207.

1991, c. 46, s. 76;
2010, c. 12, s. 1941.

Action en recouvrement

76 (1) Tout créancier de la banque peut demander au tribunal d'ordonner à un actionnaire, un membre ou une autre personne de restituer à la banque les sommes ou biens reçus à la suite d'une réduction de capital non conforme à l'article 75.

Responsabilité en tant que représentant personnel

(2) La personne qui détient des actions ou des parts sociales en qualité de représentant personnel et qui est enregistrée dans les livres de la banque à la fois comme représentant personnel d'une personne désignée et comme actionnaire ou membre n'encourt aucune responsabilité personnelle du fait du paragraphe (1), celle-ci incombant intégralement à la personne désignée.

Prescription

(3) L'action en recouvrement se prescrit par deux ans à compter de l'acte en cause.

Maintien des recours

(4) Le présent article ne limite en rien la responsabilité découlant de l'article 207.

1991, ch. 46, art. 76;
2010, ch. 12, art. 1941.

Canada Business Corporations Act, RSC 1985, c C-44, s. 38(5)

Other reduction of stated capital

38 (1) Subject to subsection (3), a corporation may by special resolution reduce its stated capital for any purpose including, without limiting the generality of the foregoing, for the purpose of

- (a) extinguishing or reducing a liability in respect of an amount unpaid on any share;
- (b) distributing to the holder of an issued share of any class or series of shares an amount not exceeding the stated capital of the class or series; and
- (c) declaring its stated capital to be reduced by an amount that is not represented by realizable assets.

Contents of special resolution

(2) A special resolution under this section shall specify the stated capital account or accounts from which the reduction of stated capital effected by the special resolution will be deducted.

Limitation

(3) A corporation shall not reduce its stated capital for any purpose other than the purpose mentioned in paragraph (1)(c) if there are reasonable grounds for believing that

- (a) the corporation is, or would after the reduction be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities.

Recovery

(4) A creditor of a corporation is entitled to apply to a court for an order compelling a shareholder or other recipient

- (a) to pay to the corporation an amount equal to any liability of the shareholder that was

Autre réduction du capital déclaré

38 (1) Sous réserve du paragraphe (3), la société peut, par résolution spéciale, réduire son capital déclaré à toutes fins, et notamment aux fins de :

- a) limiter ou supprimer l'obligation de libérer intégralement des actions;
- b) verser au détenteur d'une action émise de n'importe quelle catégorie ou série, une somme ne dépassant pas le capital déclaré afférent à cette catégorie ou série;
- c) soustraire de son capital déclaré tout montant non représenté par des éléments d'actifs réalisables.

Contenu de la résolution spéciale

(2) La résolution spéciale prévue au présent article doit indiquer les comptes capital déclaré au débit desquels sont portées les réductions.

Exception

(3) La société ne peut réduire son capital déclaré pour des motifs autres que ceux visés à l'alinéa (1)c), s'il existe des motifs raisonnables de croire que :

- a) ou bien elle ne peut, ou ne pourrait de ce fait, acquitter son passif à échéance;
- b) ou bien la valeur de réalisation de son actif serait, de ce fait, inférieure à son passif.

Recouvrement

(4) Tout créancier de la société peut demander au tribunal d'ordonner au profit de celle-ci que le bénéficiaire, actionnaire ou autre :

- a) soit paye une somme égale au montant de toute obligation de l'actionnaire, réduite ou

extinguished or reduced contrary to this section; or

(b) to pay or deliver to the corporation any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this section.

Limitation

(5) An action to enforce a liability imposed by this section may not be commenced after two years from the date of the act complained of.

(6) [Repealed, 2001, c. 14, s. 23]

R.S., 1985, c. C-44, s. 38;
2001, c. 14, s. 23.

supprimée en contravention au présent article;

b) soit restituée les sommes versées ou les biens remis à la suite d'une réduction de capital non conforme au présent article.

Prescription

(5) L'action en recouvrement prévue au présent article se prescrit par deux ans à compter de l'acte en cause.

(6) [Abrogé, 2001, ch. 14, art. 23]

L.R. (1985), ch. C-44, art. 38;
2001, ch. 14, art. 23.

[Canadian Human Rights Act, RSC 1985 c H-6, s. 41](#)

Commission to deal with complaint

41 (1) Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that

(a) the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available;

(b) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act;

(c) the complaint is beyond the jurisdiction of the Commission;

(d) the complaint is trivial, frivolous, vexatious or made in bad faith; or

(e) the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the

Irrecevabilité

41 (1) Sous réserve de l'article 40, la Commission statue sur toute plainte dont elle est saisie à moins qu'elle estime celle-ci irrecevable pour un des motifs suivants :

a) la victime présumée de l'acte discriminatoire devrait épuiser d'abord les recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts;

b) la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale;

c) la plainte n'est pas de sa compétence;

d) la plainte est frivole, vexatoire ou entachée de mauvaise foi;

e) la plainte a été déposée après l'expiration d'un délai d'un an après le dernier des faits sur lesquels elle est fondée, ou de tout délai supérieur que la Commission estime indiqué dans les circonstances.

complaint.

Commission may decline to deal with complaint

(2) The Commission may decline to deal with a complaint referred to in paragraph 10(a) in respect of an employer where it is of the opinion that the matter has been adequately dealt with in the employer's employment equity plan prepared pursuant to section 10 of the [Employment Equity Act](#).

Meaning of employer

(3) In this section, *employer* means a person who or organization that discharges the obligations of an employer under the [Employment Equity Act](#).

[Competition Act, RSC 1985, c C-34, s. 36](#)

Recovery of damages

36 (1) Any person who has suffered loss or damage as a result of

- (a) conduct that is contrary to any provision of Part VI, or
- (b) the failure of any person to comply with an order of the Tribunal or another court under this Act,

may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

Refus d'examen

(2) La Commission peut refuser d'examiner une plainte de discrimination fondée sur l'alinéa 10a) et dirigée contre un employeur si elle estime que l'objet de la plainte est traité de façon adéquate dans le plan d'équité en matière d'emploi que l'employeur prépare en conformité avec l'article 10 de la *Loi sur l'équité en matière d'emploi*.

Définition de employeur

(3) Au présent article, *employeur* désigne toute personne ou organisation chargée de l'exécution des obligations de l'employeur prévues par la *Loi sur l'équité en matière d'emploi*.

Recouvrement de dommages-intérêts

36 (1) Toute personne qui a subi une perte ou des dommages par suite :

- a) soit d'un comportement allant à l'encontre d'une disposition de la partie VI;
- b) soit du défaut d'une personne d'obtempérer à une ordonnance rendue par le Tribunal ou un autre tribunal en vertu de la présente loi,

peut, devant tout tribunal compétent, réclamer et recouvrer de la personne qui a eu un tel comportement ou n'a pas obtempéré à l'ordonnance une somme égale au montant de la perte ou des dommages qu'elle est reconnue avoir subis, ainsi que toute somme supplémentaire que le tribunal peut fixer et qui n'excède pas le coût total, pour elle, de toute enquête relativement à l'affaire et des procédures engagées en vertu du présent article.

Evidence of prior proceedings

(2) In any action under subsection (1) against a person, the record of proceedings in any court in which that person was convicted of an offence under Part VI or convicted of or punished for failure to comply with an order of the Tribunal or another court under this Act is, in the absence of any evidence to the contrary, proof that the person against whom the action is brought engaged in conduct that was contrary to a provision of Part VI or failed to comply with an order of the Tribunal or another court under this Act, as the case may be, and any evidence given in those proceedings as to the effect of those acts or omissions on the person bringing the action is evidence thereof in the action.

Jurisdiction of Federal Court

(3) For the purposes of any action under subsection (1), the Federal Court is a court of competent jurisdiction.

Limitation

(4) No action may be brought under subsection (1),

(a) in the case of an action based on conduct that is contrary to any provision of Part VI, after two years from

(i) a day on which the conduct was engaged in, or

(ii) the day on which any criminal proceedings relating thereto were finally disposed of,

whichever is the later; and

(b) in the case of an action based on the failure of any person to comply with an

Preuves de procédures antérieures

(2) Dans toute action intentée contre une personne en vertu du paragraphe (1), les procès-verbaux relatifs aux procédures engagées devant tout tribunal qui a déclaré cette personne coupable d'une infraction visée à la partie VI ou l'a déclarée coupable du défaut d'obtempérer à une ordonnance rendue en vertu de la présente loi par le Tribunal ou par un autre tribunal, ou qui l'a punie pour ce défaut, constituent, sauf preuve contraire, la preuve que la personne contre laquelle l'action est intentée a eu un comportement allant à l'encontre d'une disposition de la partie VI ou n'a pas obtempéré à une ordonnance rendue en vertu de la présente loi par le Tribunal ou par un autre tribunal, selon le cas, et toute preuve fournie lors de ces procédures quant à l'effet de ces actes ou omissions sur la personne qui intente l'action constitue une preuve de cet effet dans l'action.

Compétence de la Cour fédérale

(3) La Cour fédérale a compétence sur les actions prévues au paragraphe (1).

Restriction

(4) Les actions visées au paragraphe (1) se prescrivent :

a) dans le cas de celles qui sont fondées sur un comportement qui va à l'encontre d'une disposition de la partie VI, dans les deux ans qui suivent la dernière des dates suivantes :

(i) soit la date du comportement en question,

(ii) soit la date où il est statué de façon définitive sur la poursuite;

b) dans le cas de celles qui sont fondées sur le défaut d'une personne d'obtempérer à une

order of the Tribunal or another court, after two years from

(i) a day on which the order of the Tribunal or court was contravened, or

(ii) the day on which any criminal proceedings relating thereto were finally disposed of,

Whichever is the later.

R.S., 1985, c. C-34, s. 36;

R.S., 1985, c. 1 (4th Supp.), s. 11.

ordonnance du Tribunal ou d'un autre tribunal, dans les deux ans qui suivent la dernière des dates suivantes :

(i) soit la date où a eu lieu la contravention à l'ordonnance du Tribunal ou de l'autre tribunal,

(ii) soit la date où il est statué de façon définitive sur la poursuite.

L.R. (1985), ch. C-34, art. 36;

L.R. (1985), ch. 1 (4^e suppl.), art. 11.

[Cooperative Credit Associations Act, SC 1991, c 48, s. 83\(3\)](#)

Recovery by action

83 (1) Where any money or property was paid or distributed to a member, shareholder or other person as a consequence of a reduction of capital made contrary to section 82, a creditor of the association may apply to a court for an order compelling the member, shareholder or other person to pay the money or deliver the property to the association.

Shares held by personal representative

(2) No person holding membership shares or shares in the capacity of a personal representative and registered on the records of the association as a member or shareholder and therein described as the personal representative of a named person is personally liable under subsection (1), but the named person is subject to all the liabilities imposed by that subsection.

Limitation

(3) An action to enforce a liability imposed by subsection (1) may not be commenced more than two years after the date of the act complained of.

Action en recouvrement

83 (1) Tout créancier de l'association peut demander au tribunal d'ordonner à un associé, à un actionnaire ou à toute autre personne de restituer à celle-ci les sommes ou biens reçus à la suite d'une réduction de capital non conforme à l'article 82.

Responsabilité en tant que représentant personnel

(2) La personne qui détient des parts sociales ou des actions en qualité de représentant personnel et qui est enregistrée dans les livres de l'association à la fois comme représentant personnel d'une personne désignée et comme associé ou actionnaire, selon le cas, n'encourt aucune responsabilité personnelle du fait du paragraphe (1), celle-ci incombant intégralement à la personne désignée.

Prescription

(3) L'action en recouvrement se prescrit par deux ans à compter de l'acte en cause.

Remedy preserved

(4) This section does not affect any liability that arises under section 211.

Maintien des recours

(4) Le présent article ne limite en rien la responsabilité découlant de l'article 211.

*Employment Insurance Act, SC 1996, c 23, s. 46.1**Limitation*

46.01 No amount is payable under section 45, or deductible under subsection 46(1), as a repayment of an overpayment of benefits if more than 36 months have elapsed since the lay-off or separation from the employment in relation to which the earnings are paid or payable and, in the opinion of the Commission, the administrative costs of determining the repayment would likely equal or exceed the amount of the repayment.

2012, c. 19, s. 607.

Liability of directors to pay penalties

46.1 (1) If a penalty is imposed on a corporation under section 38 or 39 for an act or omission, the directors of the corporation at the time of the act or omission are, subject to subsections (2) to (7), jointly and severally, or solidarily, liable, together with the corporation, to pay the amount of the penalty.

Limitations on liability

(2) A director is not liable unless

(a) a certificate for the amount of the corporation's liability for the penalty has been registered in the Federal Court under section 126 and execution for that amount has been returned unsatisfied in whole or in part;

(b) the corporation has commenced liquidation or dissolution proceedings or has

Restrictions

46.01 Aucune somme n'est à rembourser aux termes de l'article 45 ou à retenir aux termes du paragraphe 46(1), à titre de remboursement d'un versement excédentaire de prestations, s'il s'est écoulé plus de trente-six mois depuis le licenciement ou la cessation d'emploi du prestataire pour lequel la rémunération est payée ou à payer et que, de l'avis de la Commission, le coût administratif pour la détermination du remboursement est vraisemblablement égal ou supérieur à sa valeur.

2012, ch. 19, art. 607.

Responsabilité des administrateurs

46.1 (1) Sous réserve des paragraphes (2) à (7), lorsqu'une personne morale s'est vu infliger une pénalité au titre de l'article 38 ou 39, ses administrateurs, au moment où elle a commis l'acte délictueux prévu à cet article, sont solidairement responsables, avec elle, du paiement de cette somme.

Restrictions relatives à la responsabilité

(2) Un administrateur n'encourt la responsabilité que dans l'un ou l'autre des cas suivants :

a) un certificat précisant la somme pour laquelle la personne morale est responsable a été enregistré à la Cour fédérale en application de l'article 126 et il y a eu défaut d'exécution totale ou partielle à l'égard de cette somme;

b) la personne morale a engagé des procédures de liquidation ou de dissolution

been dissolved and a claim for the amount of its liability has been proved within six months after the date of commencement of the proceedings or the date of the dissolution, whichever is earlier; or

(c) the corporation has made an assignment or a bankruptcy order has been made against it under the *Bankruptcy and Insolvency Act* and a claim for the amount of its liability has been proved within six months after the date of the assignment or bankruptcy order.

Defence of due diligence

(3) A director is not liable if the director exercised the degree of care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances to prevent the act or omission for which the penalty is imposed.

Limitation period

(4) No action or proceedings to recover any amount payable by a director shall be commenced more than six years after the occurrence of the act or omission for which the penalty is imposed.

Amount recoverable

(5) If execution referred to in paragraph (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

Preference

(6) If a director pays an amount in respect of a corporation's liability that is proved in liquidation, dissolution or bankruptcy proceedings,

(a) the director is entitled to any preference that Her Majesty in right of Canada would have been entitled to if that amount had not

ou elle a fait l'objet d'une dissolution et l'existence de la créance à l'égard de laquelle elle encourt la responsabilité a été établie dans les six mois avant le premier en date du jour où les procédures ont été engagées et du jour de la dissolution;

c) la personne morale a fait cession ou une ordonnance de faillite a été rendue contre elle en vertu de la *Loi sur la faillite et l'insolvabilité* et l'existence de la créance à l'égard de laquelle elle encourt la responsabilité a été établie dans les six mois suivant la date de la cession ou de l'ordonnance de faillite.

Diligence raisonnable

(3) Un administrateur n'est pas responsable lorsqu'il a agi avec le degré de soin, de diligence et d'habileté qu'une personne raisonnablement prudente aurait exercé dans des circonstances comparables pour prévenir l'acte délictueux en cause.

Prescription

(4) L'action ou les procédures visant le recouvrement d'une somme payable par un administrateur d'une personne morale se prescrivent par six ans à compter de la date à laquelle l'acte délictueux a été perpétré.

Montant recouvrable

(5) Dans le cas du défaut d'exécution visé à l'alinéa (2)a), la somme qui peut être recouvrée d'un administrateur est celle qui demeure impayée après l'exécution.

Privilège

(6) Lorsqu'un administrateur verse une somme à l'égard de laquelle la personne morale encourt une responsabilité, qui est établie lors de procédures de liquidation, de dissolution ou de faillite, il a droit à tout privilège auquel Sa Majesté du chef du Canada aurait eu droit si cette somme n'avait pas été payée et, lorsqu'un certificat a été

been paid; and

(b) if a certificate that relates to that amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment and the Commission shall make the assignment.

Contribution from other directors

(7) A director who has satisfied a claim under this section is entitled to contribution from the other directors who are liable for the claim.

[Industrial Design Act, RSC 1985, c I-9, s. 18](#)

Limitation

18 No remedy may be awarded for an act of infringement committed more than three years before the commencement of the action for infringement.

R.S., 1985, c. I-9, s. 18;
1993, c. 44, s. 169.

[Insurance Companies Act, SC 1991, c 47, s. 80\(3\), s. 758\(1\)](#)

Recovery by action

80 (1) Where any money or property was paid or distributed to a shareholder or other person as a consequence of a reduction of capital made contrary to section 79, a creditor of the company may apply to a court for an order compelling the shareholder or other person to pay the money or deliver the property to the company.

Shares held by personal representative

(2) No person holding shares in the capacity of a personal representative and registered on the records of the company as a shareholder and therein described as the personal representative of a named person is personally liable under subsection (1), but the named person is subject to all the liabilities imposed

enregistré relativement à cette somme, il peut exiger que le certificat lui soit cédé jusqu'à concurrence du versement et la Commission est autorisée à faire cette cession.

Répétition

(7) L'administrateur qui a satisfait à la créance en vertu du présent article peut répéter les parts des administrateurs tenus responsables de la créance.

Prescription

18 L'action en violation se prescrit par trois ans à compter de celle-ci.

L.R. (1985), ch. I-9, art. 18;
1993, ch. 44, art. 169.

Action en recouvrement

80 (1) Tout créancier de la société peut demander au tribunal d'ordonner à un actionnaire ou une autre personne de restituer à la société les sommes ou biens reçus à la suite d'une réduction de capital non conforme à l'article 79.

Responsabilité en tant que représentant personnel

(2) La personne qui détient des actions en qualité de représentant personnel et qui est enregistrée dans les livres de la société à la fois comme représentant personnel d'une personne désignée et comme actionnaire n'encourt aucune responsabilité personnelle du fait du paragraphe (1), celle-ci incombant

by that subsection.

Limitation

(3) An action to enforce a liability imposed by subsection (1) may not be commenced more than two years after the date of the act complained of.

Remedy preserved

(4) This section does not affect any liability that arises under section 216.

Recovery by action

758 (1) Where any money or property was paid or distributed to a shareholder or other person as a consequence of a reduction of capital made contrary to section 757, a creditor of the insurance holding company may apply to a court for an order compelling the shareholder or other person to pay the money or deliver the property to the insurance holding company.

Shares held by personal representative

(2) No person holding shares in the capacity of a personal representative and registered on the records of the insurance holding company as a shareholder and therein described as the personal representative of a named person is personally liable under subsection (1), but the named person is subject to all the liabilities imposed by that subsection.

Limitation

(3) An action to enforce a liability imposed by subsection (1) may not be commenced more than two years after the date of the act complained of.

Remedy preserved

(4) This section does not affect any liability that arises under section 841.

intégralement à la personne désignée.

Prescription

(3) L'action en recouvrement se prescrit par deux ans à compter de l'acte en cause.

Maintien des recours

(4) Le présent article ne limite en rien la responsabilité découlant de l'article 216.

Action en recouvrement

758 (1) Tout créancier de la société de portefeuille d'assurances peut demander au tribunal d'ordonner à un actionnaire ou une autre personne de restituer à la société les sommes ou biens reçus à la suite d'une réduction de capital non conforme à l'article 757.

Responsabilité en tant que représentant personnel

(2) La personne qui détient des actions en qualité de représentant personnel et qui est enregistrée dans les livres de la société de portefeuille d'assurances à la fois comme représentant personnel d'une personne désignée et comme actionnaire n'encourt aucune responsabilité personnelle du fait du paragraphe (1), celle-ci incombant intégralement à la personne désignée.

Prescription

(3) L'action en recouvrement se prescrit par deux ans à compter de l'acte en cause.

Maintien des recours

(4) Le présent article ne limite en rien la responsabilité découlant de l'article 841.

1991, c. 47, s. 758;
2001, c. 9, s. 465.

1991, ch. 47, art. 758;
2001, ch. 9, art. 465.

Limitation of Actions Act, RSNWT 1988, c. L-8

Note: this Act is also in force in Nunavut

2. (1) The following actions must be commenced within and not after the following times:

(c) actions of defamation, whether libel or slander, within two years after the publication of the libel or the speaking of the slanderous words, or where special damage is the gist of the action, within two years after the occurrence of the special damage;

2. (1) Les actions suivantes se prescrivent par les délais indiqués ci-dessous :

c) l'action en diffamation, écrite ou verbale, se prescrit par deux ans à compter de la publication de l'écrit diffamatoire ou de la profération des paroles calomnieuses; l'action fondée sur un dommage particulier se prescrit par deux ans à compter de la survenance du dommage;

Limitation of Actions Act, RSY 2002, c. 139

2(1) Subject to subsection (3), the following actions shall be commenced within and not after the times respectively hereinafter mentioned

(c) actions for defamation, whether libel or slander, within two years of the publication of the libel or the speaking of the slanderous words, or if special damage is the gist of the action, within two years after the occurrence of the damage;

2(1) Sous réserve du paragraphe (3), les actions suivantes se prescrivent par les délais respectivement indiqués ci-après :

c) l'action en diffamation, écrite ou verbale, se prescrit par deux ans à compter de la publication de l'écrit diffamatoire ou de la profération des paroles calomnieuses; l'action fondée sur le dommage particulier qui en résulte se prescrit par deux ans à compter de la survenance du dommage;

Manitoba – The Limitation of Actions Act, CCSM c L150

Limitations

2(1) The following actions shall be commenced within and not after the times respectively hereinafter mentioned:

(c) actions for defamation, within two years of the publication of the defamatory matter, or, where special damage is the gist of the

Prescription

2(1) Les actions suivantes se prescrivent par les délais respectifs indiqués ci-dessous :

c) une action en diffamation se prescrit par deux ans, à compter de la publication de l'écrit diffamatoire; lorsque l'action est

action, within two years after the occurrence of such damage;

fondée sur des dommages spéciaux, la prescription est de deux ans à compter du moment où ces dommages ont été subis;

Patent Act, RSC 1985, c P-4, s. 55.01

Liability for patent infringement

55 (1) A person who infringes a patent is liable to the patentee and to all persons claiming under the patentee for all damage sustained by the patentee or by any such person, after the grant of the patent, by reason of the infringement.

Contrefaçon et recours

55 (1) Quiconque contrefait un brevet est responsable envers le breveté et toute personne se réclamant de celui-ci du dommage que cette contrefaçon leur a fait subir après l'octroi du brevet.

Radiocommunication Act, RSC 1985, c R-2, s. 18 & 19

Right of civil action

18 (1) Any person who

(a) holds an interest in the content of a subscription programming signal or network feed, by virtue of copyright ownership or a licence granted by a copyright owner,

(b) is authorized by the lawful distributor of a subscription programming signal or network feed to communicate the signal or feed to the public,

(c) holds a licence to carry on a broadcasting undertaking issued by the Canadian Radio-television and Telecommunications Commission under the [Broadcasting Act](#), or

(d) develops a system or technology, or manufactures or supplies to a lawful distributor equipment, for the purpose of encrypting a subscription programming signal or network feed, or manufactures, supplies or

Recours civil

18 (1) Peut former, devant tout tribunal compétent, un recours civil à l'encontre du contrevenant quiconque a subi une perte ou des dommages par suite d'une contravention aux alinéas 9(1)c, d) ou e) ou 10(1)b) et :

a) soit détient, à titre de titulaire du droit d'auteur ou d'une licence accordée par ce dernier, un droit dans le contenu d'un signal d'abonnement ou d'une alimentation réseau;

b) soit est autorisé, par le distributeur légitime de celui-ci, à le communiquer au public;

c) soit est titulaire d'une licence attribuée, au titre de la [Loi sur la radiodiffusion](#), par le Conseil de la radiodiffusion et des télécommunications canadiennes et l'autorisant à exploiter une entreprise de radiodiffusion;

d) soit encore élabore un système ou une technique ou fabrique un équipement destinés à l'encodage de signaux d'abonnement ou d'alimentations réseau, les fournit à un distributeur légitime, ou

sells decoders, to enable authorized persons to decode an encrypted subscription programming signal or encrypted network feed

may, where the person has suffered loss or damage as a result of conduct that is contrary to paragraph 9(1)(c), (d) or (e) or 10(1)(b), in any court of competent jurisdiction, sue for and recover damages from the person who engaged in the conduct, or obtain such other remedy, by way of injunction, accounting or otherwise, as the court considers appropriate.

Rules applicable

(2) In an action under subsection (1) against a person,

(a) a monetary judgment may not exceed one thousand dollars where the person is an individual and the conduct engaged in by the person is neither contrary to paragraph 9(1)(e) or 10(1)(b) nor engaged in for commercial gain; and

(b) the costs of the parties are in the discretion of the court.

Evidence of prior proceedings

(3) In an action under subsection (1) against a person, the record of proceedings in any court in which that person was convicted of an offence under paragraph 9(1)(c), (d) or (e) or 10(1)(b) is, in the absence of any evidence to the contrary, proof that the person against whom the action is brought engaged in conduct that was contrary to that paragraph, and any evidence given in those proceedings as to the effect of that conduct on the person bringing the action is evidence thereof in the action.

Jurisdiction of Federal Court

(4) For the purposes of an action under subsection (1), the Federal Court is a court of competent jurisdiction.

fabrique, vend ou fournit des décodeurs permettant à des personnes autorisées à cet effet de décoder de tels signaux ou alimentations.

Cette personne est admise à exercer tous recours, notamment par voie de dommages-intérêts, d'injonction ou de reddition de compte, selon ce que le tribunal estime indiqué.

Règles applicables

(2) Le plafond des dommages-intérêts accordés, au terme d'un tel recours, à l'encontre d'une personne physique n'ayant pas contrevenu aux alinéas 9(1)e) ou 10(1)b) et n'ayant pas posé les actes en cause dans un but lucratif est de mille dollars; les frais des parties sont laissés à la discrétion du tribunal.

Preuve de procédures antérieures

(3) Dans tout recours visé au paragraphe (1) et intenté contre une personne, les procès-verbaux relatifs aux procédures engagées devant tout tribunal qui a déclaré celle-ci coupable d'une infraction aux alinéas 9(1)c), d) ou e) ou 10(1)b) constituent, sauf preuve contraire, la preuve que cette personne a eu un comportement allant à l'encontre de ces dispositions; toute preuve fournie lors de ces procédures quant à l'effet de l'infraction sur la personne qui intente le recours constitue une preuve à cet égard.

Cour fédérale

(4) La Cour fédérale est, pour l'application du paragraphe (1), un tribunal compétent.

Limitation

(5) An action under subsection (1) may be commenced within, but not after, three years after the conduct giving rise to the action was engaged in.

Copyright Act

(6) Nothing in this section affects any right or remedy that an aggrieved person may have under the *Copyright Act*.

1991, c. 11, s. 85

Right of civil action

19 (1) Any person who has made or received a radio-based telephone communication that the person believes on reasonable grounds will be or has been divulged or will be used or has been made use of contrary to subsection 9(1.1) may, in any court of competent jurisdiction, bring an action to prevent the divulgence or use of or to recover damages from the person who will divulge or has divulged or who will make use of or has made use of the radio-based telephone communication, and in any such action the court may grant any remedy, by way of injunction, damages, accounting or otherwise, as the court considers appropriate.

Evidence of prior proceedings

(2) In an action under subsection (1) against a person, the record of proceedings in any court in which that person was convicted of an offence under subsection 9(1.1) is, in the absence of any evidence to the contrary, proof that the person against whom the action is brought divulged or made use of the radio-based telephone communication and any evidence given in those proceedings as to the effect of the divulgence or use on the person bringing the action is evidence thereof in the action.

*Jurisdiction of Federal Court**Prescription*

(5) Les recours visés au paragraphe (1) se prescrivent dans les trois ans suivant la date de l'infraction en cause.

Loi sur le droit d'auteur

(6) Le présent article ne porte pas atteinte aux droits ou aux recours prévus par la *Loi sur le droit d'auteur*.

1991, ch. 11, art. 85.

Recours civil

19 (1) Quiconque a fait ou reçu une communication radiotéléphonique et a des motifs raisonnables de croire que cette communication a été ou sera communiquée ou utilisée en contravention au paragraphe 9(1.1) peut former, devant tout tribunal compétent, un recours civil pour empêcher une telle utilisation ou une telle communication, ou pour recouvrer des dommages du contrevenant. Cette personne est admise à exercer tous recours, notamment par voie de dommages-intérêts, d'injonction ou de reddition de compte, selon ce que le tribunal estime indiqué.

Preuve de procédures antérieures

(2) Dans tout recours visé au paragraphe (1) et intenté contre une personne, les procès-verbaux relatifs aux procédures engagées devant tout tribunal qui a déclaré celle-ci coupable d'une infraction au paragraphe 9(1.1) constituent, sauf preuve contraire, la preuve que cette personne a communiqué ou utilisé la communication radiotéléphonique; toute preuve fournie lors de ces procédures quant à l'effet de l'infraction sur la personne qui intente le recours constitue une preuve à cet égard.

Cour fédérale

(3) For the purposes of an action under subsection (1), the Federal Court is a court of competent jurisdiction.

Limitation

(4) An action under subsection (1) may be commenced within, but not after, three years after the conduct giving rise to the action was engaged in.

Remedies not affected

(5) Nothing in this section affects any other right or remedy that an aggrieved person might otherwise have.

1993, c. 40, s. 26.

(3) La Cour fédérale est, pour l'application du paragraphe (1), un tribunal compétent.

Prescription

(4) Les recours visés au paragraphe (1) se prescrivent dans les trois ans suivant la date de l'infraction en cause.

Autres recours

(5) Le présent article ne porte pas atteinte à tout autre droit ou recours que pourrait avoir la personne lésée.

1993, ch. 40, art. 26.

[Residential Tenancies Act, 2006, c. 17, s. 29 \(2\), s. 29](#)

Tenant applications

29 (1) A tenant or former tenant of a rental unit may apply to the Board for any of the following orders:

1. An order determining that the landlord has breached an obligation under subsection 20 (1) or section 161.
2. An order determining that the landlord, superintendent or agent of the landlord has withheld the reasonable supply of any vital service, care service or food that it is the landlord's obligation to supply under the tenancy agreement or deliberately interfered with the reasonable supply of any vital service, care service or food.
3. An order determining that the landlord, superintendent or agent of the landlord has substantially interfered with the reasonable enjoyment of the rental unit or residential complex for all usual purposes by the tenant or a member of his or her household.

Requêtes du locataire

29 (1) Le locataire ou l'ancien locataire du logement locatif peut demander par requête à la Commission de rendre l'une ou l'autre des ordonnances suivantes :

1. Une ordonnance déterminant que le locateur a manqué à une obligation prévue au paragraphe 20 (1) ou à l'article 161.
2. Une ordonnance déterminant que le locateur, son représentant ou son concierge a coupé la fourniture raisonnable d'un service essentiel, d'un service en matière de soins ou de nourriture qu'il est tenu de fournir aux termes de la convention de location ou entravé de façon délibérée la fourniture raisonnable d'un service essentiel, d'un service en matière de soins ou de nourriture.
3. Une ordonnance déterminant que le locateur, son représentant ou son concierge a entravé de façon importante la jouissance raisonnable du logement locatif ou de l'ensemble d'habitation aux fins habituelles par le locataire ou les membres de son ménage.

4. An order determining that the landlord, superintendent or agent of the landlord has harassed, obstructed, coerced, threatened or interfered with the tenant during the tenant's occupancy of the rental unit.

5. An order determining that the landlord, superintendent or agent of the landlord has altered the locking system on a door giving entry to the rental unit or the residential complex or caused the locking system to be altered during the tenant's occupancy of the rental unit without giving the tenant replacement keys.

6. An order determining that the landlord, superintendent or agent of the landlord has illegally entered the rental unit.

2006, c. 17, s. 29 (1).

Time limitation

(2) No application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.

2006, c. 17, s. 29 (2).

[**Securities Act, R.S.O. 1990, Chapter S.5, s. 138**](#)

Limitation periods

138 Unless otherwise provided in this Act, no action shall be commenced to enforce a right created by this Part more than,

(a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of any action, other than an action for rescission, the earlier of,

(i) 180 days after the plaintiff first had knowledge of the facts giving rise to the

4. Une ordonnance déterminant que le locateur, son représentant ou son concierge a harcelé, gêné, contraint, menacé ou importuné le locataire pendant qu'il occupait le logement locatif.

5. Une ordonnance déterminant que le locateur, son représentant ou son concierge a, sans donner des clés de rechange au locataire, changé ou fait changer les serrures des portes donnant accès au logement locatif ou à l'ensemble d'habitation pendant que le locataire occupait le logement.

6. Une ordonnance déterminant que le locateur, son représentant ou son concierge est entré illégalement dans le logement locatif.

2006, chap. 17, par. 29 (1).

Prescription

(2) Sont irrecevables les requêtes présentées en vertu du paragraphe (1) plus d'un an à compter du jour où s'est produite la prétendue conduite qui leur a donné lieu.

2006, chap. 17, par. 29 (2).

Prescription

138 Sauf dispositions contraires de la présente loi, l'action introduite pour faire valoir un droit créé par la présente partie se prescrit :

(a) dans le cas d'une action en résiliation ou en annulation, par 180 jours à compter de la date de la transaction qui a donné naissance à la cause d'action;

(b) dans le cas d'une action autre qu'une action en résiliation ou en annulation, par :

(i) 180 jours à compter de la date à laquelle le demandeur a initialement eu

cause of action, or

(ii) three years after the date of the transaction that gave rise to the cause of action.

R.S.O. 1990, c. S.5, s. 138.

connaissance des faits qui ont donné naissance à la cause d'action,

(ii) trois ans à compter de la date de la transaction qui a donné naissance à la cause d'action, selon celui de ces événements qui se produit en premier.

L.R.O. 1990, chap. S.5, art. 138.

[Securities Act, R.S.O. 1990, Chapter S.5, s. 138](#)

Limitation period

138.14 (1) No action shall be commenced under [section 138.3](#),

(a) in the case of misrepresentation in a document, later than the earlier of,

(i) three years after the date on which the document containing the misrepresentation was first released, and

(ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under [section 138.3](#) or under comparable legislation in the other provinces or territories in Canada in respect of the same misrepresentation;

(b) in the case of a misrepresentation in a public oral statement, later than the earlier of,

(i) three years after the date on which the public oral statement containing the misrepresentation was made, and

(ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under [section 138.3](#) or under comparable legislation in another province or territory of Canada in respect of the same misrepresentation; and

Prescription

138.14 (1) Aucune action ne doit être intentée en vertu de l'[article 138.3](#) :

(a) dans le cas de la présentation inexacte de faits dans un document, après le premier en date des jours suivants :

(i) trois ans après la date à laquelle le document contenant la présentation inexacte des faits a été publié pour la première fois,

(ii) six mois après la délivrance d'un communiqué portant qu'a été accordée une autorisation d'intenter une action en vertu de l'[article 138.3](#) ou de dispositions législatives comparables d'autres provinces ou territoires du Canada à l'égard de la même présentation inexacte des faits;

(b) dans le cas de la présentation inexacte de faits dans une déclaration orale publique, après le premier en date des jours suivants :

(i) trois ans après la date à laquelle la déclaration contenant la présentation inexacte des faits a été faite,

(ii) six mois après la délivrance d'un communiqué portant qu'a été accordée une autorisation d'intenter une action en vertu de l'[article 138.3](#) ou de dispositions législatives comparables d'autres provinces ou territoires du Canada à l'égard de la même présentation inexacte des faits;

(c) in the case of a failure to make timely disclosure, later than the earlier of,

(i) three years after the date on which the requisite disclosure was required to be made, and

(ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under [section 138.3](#) or under comparable legislation in another province or territory of Canada in respect of the same failure to make timely disclosure.

2002, c. 22, s. 185; 2004, c. 31, Sched. 34, [s. 23](#).

[Telecommunications Act, SC 1993, c 38, s. 72](#)

Civil Liability

Damages

72 (1) Subject to any limitation of liability imposed in accordance with this or any other Act, a person who has sustained loss or damage as a result of any act or omission that is contrary to this Act or any special Act or a decision or regulation made under either of them may, in a court of competent jurisdiction, sue for and recover an amount equal to the loss or damage from any person who engaged in, directed, authorized, consented to or participated in the act or omission.

Limitation

(2) An action may not be brought in respect of any loss or damage referred to in subsection (1) more than two years after the day on which the act or omission occurred.

Exception

(3) Nothing in subsection (1) or (2) applies to

c) dans le cas du non-respect des obligations d'information occasionnelle, après le premier en date des jours suivants :

(i) trois ans après la date à laquelle la divulgation obligatoire devait être faite,

(ii) six mois après la délivrance d'un communiqué portant qu'a été accordée une autorisation d'intenter une action en vertu de l'[article 138.3](#) ou de dispositions législatives comparables d'autres provinces ou territoires du Canada à l'égard du même non-respect des obligations d'information occasionnelle.

2002, chap. 22, art. 185; 2004, chap. 31, annexe 34, art. 23.

Responsabilité civile

Recouvrement de dommages-intérêts

72 (1) Sous réserve des limites de responsabilité fixées sous le régime de la présente loi ou de toute autre loi, quiconque a subi une perte ou un dommage par suite d'un manquement soit aux dispositions de la présente loi ou d'une loi spéciale, soit à une décision ou un règlement pris au titre de celles-ci, peut en poursuivre, devant le tribunal compétent, le contrevenant ou celui qui a ordonné ou autorisé le manquement, ou qui y a consenti ou participé.

Prescription

(2) Les actions en recouvrement se prescrivent par deux ans à compter de la date du manquement.

Exception

(3) Les paragraphes (1) et (2) ne s'appliquent

any action for breach of a contract to provide telecommunications services or any action for damages in relation to a rate charged by a Canadian carrier.

1993, c. 38, s. 72;
2001, c. 4, s. 122(F).

pas aux actions intentées pour rupture de contrat portant sur la fourniture de services de télécommunication ni aux actions en dommages-intérêts relatives aux tarifs imposés ou perçus par les entreprises canadiennes.

1993, ch. 38, art. 72;
2001, ch. 4, art. 122(F).

Trust and Loan Companies Act, SC 1991, c 45, s. 79(3)

Recovery by action

79 (1) Where any money or property was paid or distributed to a shareholder or other person as a consequence of a reduction of capital made contrary to section 78, a creditor of the company may apply to a court for an order compelling the shareholder or other person to pay the money or deliver the property to the company.

Shares held by personal representative

(2) No person holding shares in the capacity of a personal representative and registered on the records of the company as a shareholder and therein described as the personal representative of a named person is personally liable under subsection (1), but the named person is subject to all the liabilities imposed by that subsection.

Limitation

(3) An action to enforce a liability imposed by subsection (1) may not be commenced more than two years after the date of the act complained of.

Remedy preserved

(4) This section does not affect any liability that arises under section 212.

Action en recouvrement

79 (1) Tout créancier de la société peut demander au tribunal d'ordonner à un actionnaire ou une autre personne de restituer à la société les sommes ou biens reçus à la suite d'une réduction de capital non conforme à l'article 78.

Responsabilité en tant que représentant personnel

(2) La personne qui détient des actions en qualité de représentant personnel et qui est enregistrée dans les livres de la société à la fois comme représentant personnel d'une personne désignée et comme actionnaire n'encourt aucune responsabilité personnelle du fait du paragraphe (1), celle-ci incombant intégralement à la personne désignée.

Prescription

(3) L'action en recouvrement se prescrit par deux ans à compter de l'acte en cause.

Maintien des recours

(4) Le présent article ne limite en rien la responsabilité découlant de l'article 212.