SUPREME COURT OF YUKON

Citation: *LaPrairie v. Yukon (Government)*, 2013 YKSC 59

Date: 20130618
S.C. No. 10-A0003
Registry: Whitehorse

Between:

CLIFFORD LAPRAIRIE and VIRGINIA LAPRAIRIE, doing business as LaPrairie Bison Ranch

Plaintiffs

And

GOVERNMENT OF YUKON

Defendant

Before: Mr. Justice L.F. Gower

Appearances:

Nicholas Weigelt	Counsel for the Plaintiffs
Judith M. Hartling and Ian Yap	Counsel for the Defendant

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application by the defendant Government of Yukon ("YG") to dismiss the plaintiffs' claim on the basis that it was commenced beyond the six-year limitation period set out in para. 2(1)(j) of the *Limitations of Actions Act*, R.S.Y. 2002, c. 139.

[2] The plaintiffs, Clifford and Virginia LaPrairie, carrying on business as LaPrairie Bison Ranch, acquired a number of wood bison from YG in 1993 pursuant to the Yukon Bison Management Plan. The acquisition of the bison was governed by a contract between YG and Clifford LaPrairie ("LaPrairie"), by which LaPrairie was to eventually

acquire ownership of the bison upon the completion of certain conditions (Contract #1). The five-year term of Contract #1 was allowed to expire with conditions by both parties remaining unfulfilled. YG and LaPrairie entered into a second contract in 2001, which confirmed that the bison in LaPrairie's possession belonged to him and that his ownership of the bison would continue, subject to certain additional conditions regarding YG's access to the bison for research, wildlife viewing and hunter education purposes (Contract #2).

[3] By way of the two contracts and other communications between the parties over the ensuing years, YG repeatedly assured LaPrairie that he had full ownership of the bison. However, for reasons which I will soon detail, certain events transpired which caused LaPrairie to suspect that he may not have absolute and unencumbered ownership of the bison, or what I will refer to in these reasons as *unrestricted* ownership. These events led LaPrairie to seek further assurances from YG about the nature of his ownership. In a letter dated February 17, 2010, the Deputy Minister of Environment Yukon wrote that the authorization granted to LaPrairie pursuant to the earlier two contracts for the "care, keeping and commercial utilization" of the bison was within the context of a legislative regime, which included the Yukon *Wildlife Act* of 1986 (R.S.Y. 1986, c. 178), which was in force at the time of Contract #1, and the subsequent Yukon *Wildlife Act* of 2002 (R.S.Y. 2002, c. 229), both of which contained a provision that stated: "Subject to this Act, all property, rights title and interest in and to wildlife are vested in the Crown." LaPrairie apparently interpreted this letter as evidence that YG was retracting its earlier assurances as to his ownership of the bison. Consequently, he commenced the within action on April 9, 2010 claiming, among other things, that these assurances by YG constituted negligent misstatements or, alternatively, negligent misrepresentations.

ISSUE

[4] The issue in this application is whether LaPrairie knew, or ought to have known by the exercise of reasonable diligence, that his cause of action arose more than six years prior to the filing of claim on April 9, 2010, or, in other words, whether he knew or ought to have known of the alleged basis for this action prior to April 9, 2004.

FACTS

[5] There are no substantial disputes about the facts.

[6] In 1986, wood bison were introduced into the Yukon pursuant to the Yukon Bison Management Plan, the object of which was to assist in the conservation and regeneration of the species. The program was ultimately quite successful and, in the summer of 1992, a total of 170 bison were set free. Some of these bison began to cause problems with traffic along the Alaska Highway between Whitehorse and Haines Junction. As a result, 36 bison had to be recaptured. In relation to those recaptured bison, in late 1992, YG put out a public notice indicating that it was looking to start a captive bison program ("the Program") and was seeking participants.

[7] LaPrairie was apparently the only party with the interest and ability to take on such an undertaking. He already owned a ranch of approximately 1000 acres along that stretch of the Alaska Highway and had the financial wherewithal to commit to establishing the infrastructure to care for and feed the bison on an ongoing basis. Clifford LaPrairie deposed in his affidavit:

> "I was interested in the Program as I wanted to create something unique during my retirement, that being a bison ranch that I could, 20 years down the road, be sold to an investor." (as written)

[8] Thus, the parties entered into Contract #1. Pursuant to that contract, YG was to provide LaPrairie with 35 wood bison "with a natural age structure and sex ratio" by April 1, 1993. Over the five-year term of the contract, LaPrairie was to gradually acquire "ownership" of the captive herd by returning to YG yearling bison of the same number and sex ratio as those provided by YG. The contract also made LaPrairie solely responsible for the costs of fencing his ranch to contain the bison, as well as the costs of all other related infrastructure, feeding, labour and materials. Finally, the contract required LaPrairie to comply with all "territorial laws, regulations and policies which apply to game farming in the Yukon." The implementation of Contract #1 was initially overseen by a Captive Bison Herd Management Committee ("Bison Management Committee"), comprised of two YG officials and Clifford and Virginia LaPrairie.

[9] Contrary to its obligation to provide bison with a natural age structure and sex ratio, the bison YG provided to LaPrairie included a disproportionately high number of old male animals and a correspondingly lower number of breeding females. This created a problem for LaPrairie in that it would delay the ongoing return of yearling bison to YG. The problem was discussed by the Bison Management Committee. As it turned out, YG became less and less interested in having bison returned pursuant to the contract, as the numbers of bison in the wild were continuing to prosper. In the result, YG did not seek the return of any bison, and the five-year term of the contract was allowed to expire without any consequence.

[10] On April 1, 1995, the *Game Farm Regulations* under the 1986 *Wildlife Act* came into force (O.I.C. 1995/015). Section 27 of the 1995 *Regulations* stated:

> 27(1) Subject to subsection (2), an operator may sell a live game animal only to another operator who has a valid game farm licence.

> (2) An operator may export a live game farm animal under section 10 of these regulations.

[11] The 1995 *Regulations* defined 'game animal' as a (a) musk-ox, (b) rocky mountain elk, or (c) wood bison. 'Wood bison' was defined as '*Bison bison athabascae'*.

[12] In 2000, the new Minister of Renewable Resources, Dale Eftoda, began communicating with LaPrairie about the necessity of putting closure to Contract #1 and entering a new contract which would release LaPrairie from any further obligation to provide YG with animals from the captive herd. Clifford LaPrairie deposed in his affidavit as follows:

> "I subsequently met with Minister Eftoda at my ranch on September 8, 2000. I was concerned about the status of my ownership of the Captive Herd as the 1st Agreement had not, strictly speaking, been perfectly performed. Mr. Eftoda stated a new agreement was forthcoming and the terms would acknowledge my ownership of the bison."

[13] On August 1, 2001, Minister Eftoda wrote to LaPrairie enclosing a draft of Contract #2 and stating: "This new agreement acknowledges your ownership of the captive herd and releases you from any further obligation to provide Yukon with animals from the captive herd."

[14] Contract #2 was signed on October 25, 2001. The five-year contract confirmed that the bison in LaPrairie's possession belonged to him, but set out that YG would have access to the bison for specified purposes of research, wildlife viewing and hunter education. The contract once again explicitly stated that LaPrairie was not excused from any territorial law or policy that pertained to the keeping of wood bison in captivity.

[15] On April 1, 2002, amendments to the *Game Farm Regulations* came into force (O.I.C. 2002/81). Section 27 was changed to read:

> "27(1) Except for shipping or transporting live game farm animals from the Yukon under the authority of a permit, an operator may sell a live game farm animal only to another operator who has a valid game farm licence."[1]

"Game farm animal" was defined in s. 1 as:

> "…a member of a species of wildlife listed in Schedule A that is held in captivity for commercial purposes;"

[16] Schedule A included wood bison (*Bison bison athabascae)* as a species considered to be game farm animals if held in captivity for commercial purposes.

[17] The same year, LaPrairie apparently attempted to sell six bison to a purchaser in Dawson City by the name of Schmidt, who had applied to YG for a permit to raise bison.[2] According to Clifford LaPrairie's examination for discovery, at p. 175, Schmidt paid him for the bison, but YG declined to issue Schmidt a "game operating licence", which I interpret to be a reference to a "game farm licence" issued under the *Game Farm Regulations*. LaPrairie further testified that he was told by David Beckman, the then-Director of the Agriculture Branch of the Department of Renewable Resources, and also a former member of the Bison Management Committee, that he could be charged for selling the bison to a purchaser who was unauthorized to receive them. LaPrairie testified that he had held the purchase monies for four years, but ultimately had to return the monies to Schmidt, who never took possession of the bison because YG would not issue him a game permit. When asked at his discovery whether this was the only time that YG

[1] This is substantially the same as the current s. 27(1), although it was further amended by OIC 2003/198 to read "… only to another *Yukon* operator …".

[2] According to the affidavit of Zeb Brown, para.12, as elaborated upon by Clifford LaPrairie in his examination for discovery.

officials may have indicated that he could not sell the bison, the following exchange occurred at p. 176:

> "A They always gave me great difficulty in getting permits. And wanting health testing by other provinces, and permits for other provinces that did not require permits, they always tried to insist that I get them. So they always gave me a hard time, any time I had to sell a bison.
>
> Q And how did you feel about that?
>
> A I was mad. They were trying to stop me from my -- running my business.
>
> Q And did you think because you own the bison, you should not be subject to such permits and regulation?
>
> A No, I have always went for permits. But they always went out of their way to refuse and make it hard for me to get it.
>
> Q So, did you become familiar with the process to obtain permits?
>
> A I was familiar with the process from day one. It's in the regulations.
>
> Q The legal process?
>
> A Yes."

[18] Also in 2002, LaPrairie purchased four breeding bison bulls in Alberta, on the recommendation of Beckman, to improve the genetic diversity of the captive herd. However, when LaPrairie transported the bison back to his Yukon ranch, he failed to obtain the necessary wildlife import permits. In his affidavit, Clifford LaPrairie deposed that, because bison could be privately owned in Alberta, he did not regard them as "wildlife", and thus did not turn his mind to the need to obtain wildlife import permits.

Upon returning to the Yukon, LaPrairie spoke openly with a conservation officer about the imported bison and was subsequently charged with two offences under the Yukon *Game Farm Regulations*, for importing a game animal without a veterinary examination for disease and for importing without a wildlife permit. He was also charged under s. 6(3) of the federal *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* ("*WAPPRIITA*"), S.C. 1992, c. 52, for transporting an endangered animal between provinces and territories without a permit. After retaining counsel, LaPrairie pled guilty to the charge under *WAPPRIITA* and was sentenced on April 4, 2003 to a $1500 fine.

[19] At para. 27 of his affidavit, Clifford LaPrairie deposed that, following this conviction:

> "I became worried about the legal status of my ownership, since even bison privately purchased in a jurisdiction where private ownership bison was legal and shipped to Yukon were apparently deemed wildlife in the Yukon."

[20] In his statement of claim, at para. 19, LaPrairie pled:

> "The plaintiffs suspected, as a result of the above prosecution, that the Initial Representations [relating to Contract #1] and Ownership Representations [made by Minister Eftoda in relation to Contract #2] were untrue as contrary to the said representations, the *Wildlife Act,* R.S.Y. 1986, c. 178 defined bison as "wildlife" and despite having been issued a Yukon Game Farm Licence in 1995, under s. 190(1) of that *Act*, no person could own wildlife." (my emphasis)

[21] On December 15, 2003, LaPrairie wrote to the then Minister for the Environment, Jim Kenyon, asking for clarification on whether bison were considered wildlife. Minister Kenyon responded on January 8, 2004 confirming that, under the Yukon *Wildlife Act*, "wood bison are legally defined as wildlife". LaPrairie was concerned about this response

because he thought it might call into question the nature of his ownership of his captive herd. At para. 29 of his affidavit he deposed: "I contemplated taking legal action."

[22] However, rather than suing YG, LaPrairie chose to contact the subsequent Minister for the Environment, Archie Lang, for further clarification. On September 17, 2004, Minister Lang again confirmed that bison were wildlife under the *Wildlife Act*, but were "also defined as game farm animals if held in captivity under a game farm licence."

[23] Confused by this response, LaPrairie sought a meeting with yet another Minister for the Environment, Peter Jenkins, which took place on November 1, 2004. At that meeting, Minister Jenkins confirmed that LaPrairie owned his bison. This assurance was followed by a letter from Minister Jenkins on January 4, 2005, in which he stated:

> "With respect to the ownership of game farm animals, the Yukon Government is currently exploring various regulatory mechanisms that could be used to provide game farmers with greater ownership certainty. In the meantime, the existing Game Farm Regulations provide the authorization for you to buy, sell and hold game farm animals within the defined parameters." (my emphasis)

[24] LaPrairie then waited four years for YG to make changes to either its policies or the relevant regulations, as Minister Jenkins had suggested would be done. Not seeing any movement in that regard, in 2009 LaPrairie once again pursued discussions with the new Minister responsible for this area. This led to a meeting with government officials on April 16, 2009, which was followed by a letter from the Deputy Minister for the Environment, Kelvin Leary, dated May 27, 2009, responding to LaPrairie's questions regarding the nature of his ownership of the bison. In that letter, Leary stated:

> "By definition, wood bison are wildlife under the *Wildlife Act* and the normal rule is that all property in wildlife is vested in the Crown and subject to the *Wildlife Act* and Regulations made under the Act. As an approved licensed game farm you

> have an ability to obtain and sell wood bison in accordance with the applicable legislation. Earlier this year Yukon government approved a change to the Game Farm Regulation to permit the retail sale of meat from Yukon game farm animals.
>
> We remain satisfied that the *Wildlife Act* and Regulations recognize that as a licensed game farmer you hold exclusive property in wood bison that you have lawfully acquired and that you keep in an authorized game farm operation.
>
> The bison you have legally acquired remain subject to regulation by government and in this respect; the bison you possess are no different from private property such as domestic livestock or house pets. I confirm no further action is contemplated by the Yukon government with respect to legislative or regulatory change to further address ownership interests in game farm animals." (my emphasis)

[25] LaPrairie was apparently not happy with this response, and he retained counsel to communicate further with Deputy Minister Leary, which ultimately resulted in the reply from Leary dated February 17, 2010, which I mentioned at the outset of these reasons, in which Leary made reference to the provision in the *Wildlife Act* which states that "all property, rights title and interest in and to wildlife are vested in the Crown."

ANALYSIS

[26] Although LaPrairie has pled both negligent misstatement and negligent misrepresentation as alternative causes of action, I am not persuaded that Canadian law makes a distinction between the two. The leading case of *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87, sets out the five general requirements to establish the cause of action of negligent misrepresentation:

1) there must be a duty of care based on a "special relationship" between the representor and representee;

2) the representation in question must be untrue, inaccurate, or misleading;

3) the representor must have acted negligently in making the representation;

4) the representee must have relied, in a reasonable manner, on the negligent misrepresentation; and

5) the reliance must have been detrimental to the representee in the sense that damages resulted.

[27] The critical issue in this application is when LaPrairie knew, or ought reasonably to have known, that YG's representations that he owned the bison were, as he alleges, "untrue, inaccurate or misleading". Although I do not wish to stray too far into the ultimate issue of whether YG's communications were a negligent misrepresentation, resolving this threshold question does require some consideration of what was actually said by the various Ministers, Deputy Ministers and Directors to LaPrairie.

[28] According to the submissions by LaPrairie's counsel at this hearing, it was not until he received the last two letters I just referenced from Deputy Minister Leary in 2009 and 2010 that he realized that YG's previous representations regarding his ownership of the bison were untrue. Accordingly, LaPrairie claims that the cause of action did not arise before this time period, and certainly not before 2009, because he did not previously know that the representations were untrue. Further, he says that he could not have been expected to have discovered the falsity of the representations with the exercise of reasonable diligence before this point in time.

[29] YG's counsel submitted that the cause of action arose on September 8, 2000 when Minister Eftoda met with LaPrairie to discuss the formation of Contract #2. LaPrairie deposed in his affidavit that he met with the Minister at that time because he was "concerned about the status of [his] ownership" of the bison, given that Contract #1 "had not, strictly speaking, been perfectly performed." LaPrairie further deposed that Minister Eftoda assured him that a new agreement was forthcoming which would acknowledge his "ownership" of the bison. According to paras. 16 and 17 of the statement of claim, LaPrairie apparently believed in the truth of this representation and consequently continued to incur further infrastructure costs for the care and feeding of the bison.

[30] With respect, I disagree with YG's counsel in this regard. It would appear to me that LaPrairie's response to this meeting with Minister Eftoda goes more to the fourth requirement for establishing negligent misrepresentation, i.e. that the representee must have relied, in a reasonable manner, on the negligent misrepresentation. Something more than the fact that these representations were made is necessary to establish when LaPrairie first knew, or ought reasonably to have known, that they, as he alleges, were untrue, inaccurate or misleading.

[31] Attempting to answer the question about when LaPrairie knew or ought to have known about the cause of action will require a probing into what exactly his expectations were regarding his ownership of the bison at a given time and whether he had a flawed understanding based on YG's representations.

[32] On the one hand, LaPrairie apparently was always aware that his possession of the bison was expressly subject to the application of territorial legislation. Indeed, his examination for discovery transcript is replete with numerous references to his

knowledge of the Yukon laws, regulations and policies applicable to his ownership of the bison. At least since April 1, 1995, that legislative regime included the *Game Farm Regulations*, quoted above, which restricted the sale of wood bison within the Yukon to another operator having a valid game farm licence. Subject to an argument on the definition of "wildlife" being expanded from the 1986 *Wildlife Act* to the 2002 *Wildlife Act*, which I will address below, LaPrairie is deemed to have known that this was the law and that his ownership of the bison was subject to that law.

[33] At pp. 17 and 18 of his examination for discovery, LaPrairie gave an example of his knowledge that his ownership of the bison was subject to the application of territorial legislation. There, he stated that his ownership was analogous to owning a dog and being subject to a law requiring a dog licence. LaPrairie also effectively conceded that ownership of the bison was subject to any applicable rules and regulations.

[34] On the other hand, LaPrairie seems to have an expectation that, based on his discussions with YG and the contracts coming out of them, his ownership was entirely *unrestricted,* such that he could eventually sell the bison to any willing purchaser, without any government interference whatsoever. This is evident from the several references by LaPrairie at his examination for discovery to his attempted sale of six bison to Mr. Schmidt, in Dawson City (at pp. 30-31, 60, 175 and 178). Although LaPrairie could not recall the exact year in which this happened, it is apparent from the affidavit of Zeb Brown (at para.12), who was YG counsel responsible for the prosecution of LaPrairie in 2002-03, that this occurred in 2002. An example of the nature of LaPrairie's expectation of ownership in this regard is found at pp. 59-61 of his discovery. After acknowledging that his ownership rights included the rights to buy and sell the bison, to import and

export them, and to sell the meat and the hides, the following exchange occurred, followed by a telling interjection by LaPrairie's counsel:

> "Q … But they've [YG] allowed you to do anything and everything you want with it [the bison], subject to regulations. Is that not ownership, Cliff?
>
> A No, it's not. I could not sell them to my customer in Dawson City. I had his money for four years and they refused to give him a permit.
>
> MR. WEIGELT: And if I might interject here, that is certainly a fundamental problem, is the game farm licence is issued at the pleasure of the Crown every year. And it's entirely -- my read on the law, in that regard, is, it's entirely at the pleasure of the Crown. And that is, in my view, certainly an impediment to transfer to someone else, to a third-party."

[35] The importance of this point to LaPrairie was underscored by his counsel making a virtually identical submission at the hearing on this application. It is also evidenced by a similar pleading at para. 25 of the statement of claim that, contrary to YG's representations regarding ownership:

> "… The plaintiffs have never had the full benefit of ownership of the Captive Herd. The plaintiffs' possession of the Captive Herd has always been and remains at the pleasure of the Crown."

[36] If indeed LaPrairie expected that his ownership of the bison would have been *unrestricted*, in the sense that he had the right to an unregulated sale of the bison, the expectation is unreasonable. As I stated above, he always knew that his ownership was subject to Yukon legislation, which as of April 1, 1995, included the provision in s. 27(1) of the *Game Farm Regulations*, which meant that any sale of the bison in the Yukon had to be to another person holding a game farm licence. Therefore, to the extent that this provision has adversely affected the marketability of the bison, it is a restriction on the

nature of LaPrairie's ownership which was in place for just over 9 years prior to the effective limitation date of April 9, 2004.

[37] Leaving aside for the moment the proposition that LaPrairie is deemed to have known the law over that time period, he certainly would have realized that Yukon legislation restricted his ability to sell the bison in 2002, assuming that is the correct year in which LaPrairie attempted to sell the six bison to Schmidt in Dawson City. If I am in error about the year in that regard, I assume that the date or relative time period when that occurred is ascertainable by counsel.

[38] If indeed the attempted sale to Schmidt occurred in 2002, then LaPrairie has commenced his action more than six years after the cause of action arose, and YG should succeed on this application.

[39] However, LaPrairie also relies upon two further arguments in opposing YG's application.

[40] The first of these arguments is that the subsequent reassurances that he received from various YG Ministers and officials as to the unrestricted nature of his ownership constitutes a continuing course of tortious conduct, and that the last of these assurances signifies the beginning of the limitation clock. In particular, I understand LaPrairie to rely on the meeting with Minister Jenkins, on November 1, 2004, when Jenkins again assured LaPrairie that he owned the bison. I reject this argument for two reasons.

[41] First, LaPrairie relies upon *Seidel v. Kerr,* 2003 ABCA 267, as an example of a case where a cause of action was constituted by a series of acts or a course of conduct. However, that case is distinguishable because it involved an allegation of oppressive

conduct, which virtually by definition occurs over a course of time from a series of acts and not one indivisible act.

[42] Second, and more importantly, the information provided to LaPrairie by YG Ministers and officials subsequent to the 2002 attempted sale to Schmidt and including the information received from Minister Jenkins in November 2004, never included a representation that LaPrairie had *unrestricted* ownership of the bison, such that the legislation he knew existed did not apply to him. On the contrary:

a) The letter from Minister Kenyon, dated January 8, 2004, expressly reminded LaPrairie that wood bison are considered "wildlife" and subject to the 2002 *Wildlife Act.* Thus, LaPrairie is deemed to have known that, pursuant to s.101(1) of that *Act*, "all property, rights, title and interest in and to wildlife are vested in the Crown", and subject to the *Wildlife Act* and associated regulations;

b) The follow-up letter from Minister Jenkins dated January 4, 2005 expressly stated:

> "… The existing Game Farm Regulations provide the authorization for you to buy, sell and hold game farm animals <u>within the defined parameters</u>." (my emphasis);

I interpret "defined parameters" as a reference to provisions such as s. 27(1) of the *Game Farm Regulations*, which restrict the sale of live game farm animals to operators holding a valid game farm licence; and

c) The letter from Deputy Minister Leary of May 27, 2009, which comprehensively described the nature of LaPrairie's ownership of

> the bison as being "subject to" underlying Crown ownership, and
>
> the *Wildlife Act* and Regulations.

[43] Counsel for LaPrairie also argued that YG's representations were misleading because they suggested that they had led LaPrairie to believe that bison were not 'wildlife' and therefore not caught by of s. 101(2) of the 2002 *Wildlife Act* (and s. 190(1) of the 1986 *Act*). Therefore, LaPrairie was negligently led to believe that his rights were not limited by the *Act* and its associated regulations; i.e. while "no person could own wildlife", a person could own bison.

[44] Under the 1986 *Wildlife* Act, 'wildlife' was defined as "a vertebrate animal of any species or type that is wild by nature in the Yukon…", and it is arguable that, because the wood bison were first released into the wild in the Yukon in 1988, they should be considered a "transplanted species" and not "wild by nature in the Yukon". YG's counsel countered that wood bison could have been considered as wild by nature in the Yukon because they previously existed as a species in this Territory for thousands of years, and have only been absent for a much shorter period of time prior to their reintroduction in 1986.[3] Counsel also relied on *R. v. Alsager*, 2011 SKPC 184, for the proposition that the phrase "wild by nature" modifies the word "species", rather than the particular animals at issue.

[45] In my view this issue became moot with the amended definition of "wildlife" in the 2002 *Wildlife Act,* which came into force January 1, 2003, and states :

> "… a vertebrate animal of any species or type that is wild by nature, and includes wildlife in captivity…"

[3] With respect, there is little or no evidence of this assertion in the material before me.

In other words, under the 2002 *Act,* any species that is wild by nature, regardless of its location or origin, would be considered wildlife. At para. 27 of his outline, LaPrairie's counsel acknowledged that this expanded definition of wildlife would include wood bison. Thus, as of the effective date of the 2002 *Wildlife Act*, January 1, 2003, LaPrairie's wood bison were clearly considered to be wildlife and therefore, even on his own argument, he knew or ought to have known that they were subject to the Yukon's legislative regime with respect to wildlife. Further, that regime includes the *Game Farm Regulations*, which LaPrairie now seems to say improperly restrict the nature of his ownership of the animals.

[46] Even if LaPrairie had any doubts in that regard, they should have been resolved by Minister Kenyon's letter of January 8, 2004, which expressly confirmed that bison are wildlife under the 2002 *Act*. In other words, LaPrairie either knew or ought reasonably to have known that his ownership of the bison was not *unrestricted* from that time forward, and this was prior to the effective limitation date of April 9, 2004.

[47] The final argument by LaPrairie in opposition to YG's application is that the various ownership representations by YG officials constitute a form of "officially induced error". The problem with the argument is that it attempts to use the doctrine of "officially induced error" as a *sword* within a civil context, when Canadian courts have exclusively applied the doctrine as a *shield*, i.e. a defence, in the context of criminal or regulatory offences.

[48] The sole case relied upon by LaPrairie's counsel in this regard is *R. v. Jorgensen*, [1995] 4 S.C.R. 55, which was a criminal law case involving charges of selling obscene material without lawful justification or excuse. On the eventual appeal to the Supreme Court of Canada, the majority declined to consider the issue of officially induced error of

law because it was not raised in the courts below or on the appeal to that court. Speaking for himself, Lamer C.J. stated that officially induced error of law is an exception to the rule, codified in s. 19 of the *Criminal Code*, that ignorance of the law is no excuse, and can only be raised after the Crown has proven all the elements of the alleged offence. He further held that the doctrine is distinct from the defence of due diligence and is applicable to regulatory as well as criminal offences. Finally, while a successful application of the doctrine will lead to a judicial stay of proceedings, an argument on officially induced error will only be successful "in the clearest cases".

[49] In *Levis (City) v. Tetrault*, 2006 SCC 12, the Supreme Court of Canada dealt with a case involving respondents charged with operating a motor vehicle without having paid either the required registration fees or the fees to renew a driver's licence, and one of the defences raised was officially induced error. At para. 20, Lebel J., for a unanimous court, acknowledged that the Supreme Court had not yet clearly accepted the defence of officially induced error, although several other Canadian courts had done so. At para. 22, he underscored that the Court "has firmly and consistently applied the principle that ignorance of the law is no defence", but recognized the need for flexibility in the criminal law context as follows:

> "…[T]he inflexibility of this rule is cause for concern were the error of law of the accused arises out of an error of an unauthorized representative of the state and the state then demands, through other officials, that the criminal law be applied strictly to punish the conduct of the accused. In such a case, regardless of whether it involves strict liability or absolute liability offences, the fundamental fairness of the criminal process would appear to be compromised…."

Lebel J. then went on to apply the principles of the defence earlier enunciated by Lamer J. in *R. v. Jorgensen*, which I just cited.

[50] These authorities indicate that the doctrine is only applicable as a defence within a criminal or regulatory law context, and not as a ‘defence’ to a limitations argument, as sought by LaPrairie’s counsel on this application.

CONCLUSION

[51] I conclude that LaPrairie either knew or ought to have known by the exercise of reasonable diligence, prior to April 9, 2004, that his ownership of the bison was not *unrestricted* in the sense that he now seeks to assert. In particular, I find that he knew or ought reasonably to have known, that his ability to sell the wood bison to purchasers within the Yukon was restricted by the current and former s. 27 of the *Game Farm Regulations*, since his attempted sale of bison to Mr. Schmidt was blocked in 2002. Accordingly, the plaintiffs’ claim is dismissed on the basis that the action was commenced beyond the six-year limitation period provided for under para. 2(1)(j) of the *Limitation of Actions Act*.

[52] Costs were not expressly sought in the notice of application and were not addressed in the hearing before me. However, if counsel are unable to resolve the issue, I will remain seized of this matter for that purpose and a date for further argument can be arranged if necessary.

Gower J.