SUPREME COURT OF NOVA SCOTIA

Citation: *Rapid Camp Ltd. v. Dalhousie University et al.*, 2026 NSSC 318

Date: 2026-10-16
Docket: Hfx, No. 509991
Registry: Halifax

Between:

Rapid Camp Ltd., a body corporate

Plaintiff

v.

Dalhousie University, Lukas Swan, Jeff Dahn, Nova Scotia Power Inc., and David McGregor

Defendants

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Decision

Judge: The Honourable Justice John A. Keith

Heard: April 13, 14 and 15, 2026, in Halifax, Nova Scotia

Counsel: Jasmine Ghosn, Counsel for the Plaintiff

Michael Scott, Counsel for Dalhousie University, Lukas Swan, Jeff Dahn

Stewart Hayne and Matthew McEwen, Counsel for Nova Scotia Power Inc. and David McGregor

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By the Court:

INTRODUCTION

[1] On October 28, 2021, the Plaintiff Rapid Camp Ltd. ("Rapid Camp") commenced this action against:

1. Dalhousie University ("**Dalhousie**");
2. Lukas Swan, an associate professor at Dalhousie University in the Department of Mechanical Engineering ("**Dr. Swan**");
3. Nova Scotia Power Inc. ("**NSPI**"); and
4. David McGregor who was employed by NSPI as its General Manager of Technical and Construction Services. Mr. McGregor left NSPI in September, 2013 to serve as Senior Project Manager for NSPI's parent company (Emera Inc.) in connection with its CNG project. In 2014, Mr. McGregor became the Vice President of Asset Management for Emera Carribean Inc. and, following that, President and Chief Operating Office of Grand Bahama Power Company, another Emera subsidiary.

[2] The Action also named Jeff Dahn as a Defendant. Dr. Dahn is a professor at Dalhousie University's Department of Chemistry. Rapid Camp subsequently withdrew its claims against Dr. Dahn.

[3] Reducing the claim to its essence, Rapid Camp alleges that it conceived a novel residential battery-storage concept. The concept has been described as an integrated, grid-connected and bi-directional battery system that could serve both residential homeowners and the utility as a cost-effective resource for the storage, usage, and distribution of electricity. It is referred to below as the "**Concept**".[1] Rapid Camp says that it disclosed the Concept to the Defendants on a confidential basis - subject to the express understanding and agreement that the Plaintiffs retained an enforceable legal and equitable interest in the research as well as the potential commercial exploitation of this Concept. Among other things, Rapid Camp says that it was closely involved in the preparation of a successful application to fund

[1] The confidential idea and related information are broadly labelled "Proprietary Information" in the Statement of Claim. Although this term is capitalized in the Statement of Claim, no specific definition is provided. I return to a more fulsome description of the alleged confidential idea and "Proprietary Information" below.

further research under the Natural Sciences and Engineering Research Council of Canada's ("**NSERC's**") "Engage Grant Program".

[4] Rapid Camp alleges that the Defendants breached their legal obligations by misappropriating the Plaintiff Rapid Camp's confidential information regarding the Concept. Among other things, Rapid Camp alleges that it was denied information, excluded from ongoing involvement, and denied the consequential benefits associated with the Concept.

[5] Rapid Camp alleges that this misconduct included the withholding of research result arising out of the Engage Grant. Further, Dr. Swan intentionally and negligently misrepresented the status of ongoing research, including any identified technical or commercial advantages associated with the Concept. Instead, all valuable research and insight was improperly passed along to (and pursued by) NSPI.

[6] The Plaintiff states that the Defendants are jointly and severally liable for the following tortious conduct:

1. Breach of confidence;
2. Breach of fiduciary duty;
3. Unjust enrichment; and
4. Unlawful interference in economic relations.

[7] I pause here to note that the Plaintiff alleges that Dalhousie is vicariously liable for any alleged tortious acts of Dr. Swan. During the course of submissions, Dalhousie denied liability but acknowledged and agreed that if Dr. Swan is found personally liable for any of the alleged misconduct, Dalhousie would be vicariously liable for any damage.

[8] As to the merits of the claims, the Defendants assert that there was nothing novel, confidential, or concrete about the alleged Concept. The Defendants say that the Plaintiff, at best, came up with only nascent ideas around potential uses for residential batteries, devoid of any substantive work product or actionable details such as technical specifications, design work, or proprietary elements. None of these undeveloped brainstorms, the Defendants say, create grounds for an actionable claim. Moreover, the Defendants say that the Plaintiff's idea was already publicly available and formed part of Dr. Swan's existing research into opportunities for battery storage and discharge. Indeed, the Defendants insist, the technology

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identified by the Plaintiffs was already available in the market (e.g. the Tesla Powerwall or other battery technologies) and had been developed independently and without incorporating any of the alleged concept. Moreover, NSERC Engage Grant No. 265921201 and related feasibility research was dedicated to an assessment of battery storage economics, which neither relied upon nor sought to build upon any business concept for which the Plaintiff might claim a proprietary or other legal interest. In short, the Defendants conclude, there are no facts might establish the existence of confidential or proprietary information and, by extension, no possibility of having committed any of the alleged torts.

[9] Finally, the Defendants state that the Plaintiff knew or ought to have known that the Engage Grant research opportunity was conditional upon the involvement of a single industry partner: NSPI in this case. The necessity of NSPI's involvement and the associated implications (e.g. that, as "industry partner", NSPI was entitled to the fruits of the Engage Grant research) was made clear to everyone, including Rapid Camp. In the circumstances, there could be no alleged misrepresentation regarding NSPI or Rapid Camp's alleged "proprietary interests". Nor did Dalhousie or Dr. Swan ever misrepresent either the status of their research or NSPI's interest in it as the identified "industry partner".

[10] The matter is set down for trial beginning June 7, 2027.

[11] In advance of trial, the Defendants brought this Motion for Summary Judgment. The Plaintiff countered with its own Motion for Summary Judgment.

[12] As to the evidence before this Court:

1. The Defendants NSPI, David McGregor, Dalhousie, and Dr. Lukas Swan filed affidavits sworn by Mr. McGregor, Dr. Swan, Dr. John Newhook (Dean of the Faculty of Engineering at Dalhousie University), Jordan Dorey (Senior Project Manager with NSPI), Elizabeth Wilband (legal assistant to counsel for NSPI and David McGregor who attached relevant documentation), and Matthew MacLellan (co-counsel for the Defendant Dalhousie). NSPI also filed the expert opinion of Dr. Mohamed Ahmed;
2. The Plaintiff, Rapid Camp, filed affidavits sworn by Peter Ghosn (Rapid Camp's directing mind), Mark Yazbek (Rapid Camp's Vice-President), and Cristine Kahil (Peter Ghosn's sister and President of

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an entity entitled Rockingstone Developments Inc.[2]). Rapid Camp also filed an expert opinion sworn by the professional engineer, David Stewart; and

3. Counsel for the Plaintiff cross-examined the Defendants, Mr. McGregor, Dr. Swan, and the Plaintiff's expert, Dr. Ahmed.

THE LAW AROUND SUMMARY JUDGMENT

[13] Motions for Summary Judgment are designed to cull claims or defences which do not require the time, expense and procedural rigours associated with a full trial. In *Burton Canada Company v. Coady*. 2013 NSCA 95 ("***Burton*"**), Saunder, J.A. wrote:

> [22] "Summary" is intended to mean quick and effective and less costly and time consuming than a trial. The purpose of summary judgment is to put an end to claims or defences that have no real prospect of success. [para. 22]

[14] In *Hercules Management Ltd. v. Ernst & Young* [1997] 2 S.C.R. 165 ("***Hercules Management*"**), the Supreme Court of Canada developed the following two stage test for summary judgment:

> Stage 1: The moving party bears the evidentiary burden of demonstrating that there is no genuine issue of material fact for trial. If there are genuine issues of material fact, the motion for summary judgment must be dismissed; and
>
> Stage 2: If there are no genuine issues of material fact for trial, the Court examines whether the party opposing summary judgment had a real chance of success.
>
> [at para. 15]

See also *Guarantee Company of North America v. Gordon Capital*, [1999] 3 S.C.R. 423, referred to herein as "***Guarantee Company***", at para. 27.

[15] Nova Scotia adopted this two-stage test as the governing template when assessing a request for Summary Judgment. In *Shannex Inc. v. Dora Construction Ltd.*, 2016 NSCA 89 ("***Shannex***"), the Nova Scotia Court of Appeal sought to provide clarity and a degree of analytical discipline by enveloping the two-part test

[2] Rockingstone Developments Inc., among other things, allegedly maintained an interest in the business opportunities associated with the Concept and also paid an earlier security for costs award.

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within the following five questions which the motion judge must consider in sequential order:

1. **Does the challenged pleading disclose a genuine issue of material fact, either pure or mixed with a question of law?**

2. If the answer to #1 is No, then**: does the challenged pleading require the determination of a question of law, either pure, or mixed with a question of fact?**

3. If the answers to #1 and #2 are No and Yes respectively, leaving only an issue of law, then the judge "may" grant or deny summary judgment: Rule 13.04(3). Governing that discretion is the principle in *Burton*'s second test: **Does the challenged pleading have a real chance of success?**

4. If the answer to question #3 is Yes, leaving only an issue of law with a real chance of success, then under Rule 13.04(6)(a): **Should the judge exercise the 'discretion' to finally determine the issue of law?**

5. If the motion under Rule 13.04 [for summary judgment] is dismissed, **should the action be converted to an application,** and if not, what directions should govern the conduct of the action?

[*Shannex*, at paras. 34 - 42]

[16] Questions 1 - 3 from *Shannex*'s sequential analysis bear additional comment. And as between Questions 1 - 3, Question 1 (whether there is a genuine issue of material fact for trial) often proves the most challenging and legally precarious.

Question 1: Does the challenged pleading disclose a genuine issue of material fact, either pure or mixed with a question of law?

[17] The focus of Stage 1 "... is solely whether there is a dispute of material fact" [*Arguson Projects Inc. v. Gil-Son Construction Limited*, 2023 NSCA 72 ("***Arguson***"), at para. 35, *emphasis added*]. The singular nature of this task suggests a simplicity that can be deceiving because the analytical constraints may be complicated, legally and factually.

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[18] A “material” fact is one which will affect the outcome of a trial (*Tri-County Regional School Board v. 3021386 Nova Scotia Limited*, 2021 NSCA 4 ("***Tri-County Regional School Board***"), at para. 20)

[19] However, material facts do not exist in a legal vacuum. As indicated, a fact is only “material” if it will affect the outcome at trial. In other words, material facts must be significant at law or legally consequential. Therefore, the Court is necessarily compelled to consider the controlling law (including, importantly, the essential elements of any alleged cause of action) to determine which facts are “material” and which are not. Again, if a particular fact will impact the legal result, it is material. By contrast, “[a] dispute about an incidental fact — i.e. one that would not affect the outcome — will not derail a summary judgment motion” (emphasis added, from *Shannex* at para. 34, adopting *2420188 Nova Scotia Ltd. v. Hiltz*, 2011 NSCA 74 (“***2420188”***), at para. 27, and *Burton* at paras. 41 and 87). In sum, although Question 1 of *Shannex* is focussed solely on assessing whether there is a genuine issue of material fact, this does not (and cannot) mean that the inquiry is entirely factual in nature and untethered from the governing law.

[20] Two, related points bear emphasis:

1. Question 1 requires the motion judge to first identify and filter the material facts in support of (or in opposition to) the challenged pleading. Having done so, the motion judge assesses whether a genuine issue of material fact exists. If a genuine issue of material fact exists, the motion judge does not go further and draw conclusions around (or answer) the underlying, ultimate questions of law. The task is largely factual in nature although, as indicated, material facts cannot emerge in a legal vacuum. Were that true, the Court's factual inquiries would become an unguided, arbitrary journey through the evidence; and

2. The motion judge must be careful not to entangle the factual determinations with the ultimate questions of law. In order to avoid falling into legal error, the motions judge must again remain vigilant to the distinction between the ultimate legal question and the material facts which then inform how the ultimate legal question is determined.

   The decision in *Arguson* provides a useful illustration of the potential complexity and how these two issues (material fact versus

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> the ultimate legal issue) can become conflated. In *Arguson*, a subcontractor, Gil-Son, sought additional compensation for construction delays on a Halifax redevelopment project. The project manager (*Arguson*) initially denied the delay claim in a September 14, 2021 email but indicated it would reconsider if supporting documentation were provided. After further invoices and correspondence, *Arguson* sent a July 6, 2022 email reaffirming that it accepted "no responsibility" for the claim. Condition 8.1 of the subcontract required any disagreement with a project manager "decision" to be disputed in writing within seven working days, failing which the subcontractor would be deemed to have accepted the decision and waived any related claim. It was undisputed that Gil-Son did not provide the required notice after receiving the July 6 email.
>
> The key issue was whether the July 6, 2022 email constituted a "decision" under the subcontract, thereby triggering the notice requirement. The motion judge treated that question as involving a material factual dispute. On appeal, Bourgeois J.A. disagreed, holding that:
>
> a. The essential material facts were limited to the wording of the July 6, 2022 email and the absence of any dispute notice. Those two facts were uncontroversial and, therefore, there was no genuine issue of material fact; and
>
> b. The remaining question of law was distinct but similarly contained. Namely: whether the July 6, 2022 email amounted to a contractual "decision" and whether any waiver of contractual requirements had occurred was a separate and extricable question of law – not a question of fact. Bourgeoise, J.A. concluded that the motion judge incorrectly "collapsed the first two stages of the *Shannex* analysis into one" (at para. 46) and "short-circuited" the proper analysis (at para. 48). Instead, the Court concluded that the material facts were limited and undisputed, while the legal consequences of those facts had to be determined separately

[21] In summary and at the risk of repetition, the motion judge must be able to identify the "material facts" that will affect the outcome of the trial — either in support of the claims being asserted or the defences made in response. In doing so,

the motion judge must consider the basic law that will inform the impugned claim or defence and affect the outcome at trial. Absent a coherent, legal framework, the motion judge cannot assess whether a fact is “material” in a principled manner — let alone distinguish “material” facts from those that are “immaterial”.

[22] If a genuine issue (or dispute) around the material facts emerges, the motion judge must dismiss the Motion for Summary Judgment. However, in making that assessment, the motion judge must be vigilant not to compress the assessment of any alleged dispute of material fact with the subsequent task of assessing the more specific legal questions that may require determination — and potentially mislabel the ultimate legal issue as an issue of material fact, as occurred in *Arguson.*

[23] Answering Question 1 from *Shannex* is informed by the following additional four guiding principles:

1. While Question 1 of the *Shannex* analysis refers to the “challenged pleading”, the issues extend beyond the pleadings. The existence or absence of a genuine issue of material fact must be grounded in the evidence before the Court — not conjectural thinking or pleadings which contain artful allegations that are not supported by the evidence. The following two appellate cases speak to this issue:

    a. In *Risley v. MacDonald*, 2022 NSCA 76 ("***Risley***"), Farrar, J.A. wrote that “… determining whether a genuine issue of material fact exists is based on both the pleadings and the evidence, not simply 'an issue tied to the pleadings’” (at para. 56, emphasis in original). See also *Burton* , at para. 87, point 6; and

    b. In SystemCare Cleaning and Restoration Limited v. Kaehler,2019 NSCA 29 ("SystemCare Cleaning"), the Nova Scotia Court of Appeal offered insight into this concern. In that case, Bourgeois, J.A. concluded that the motion judge:

> ... was sidelined by delving into a consideration of the factual similarities in this matter and others where an agency was found to exist. Further, his consideration of the principles of agency by estoppel was incomplete. Determining whether there is a genuine issue of material fact must be founded in the pleadings and the evidence presented in the matter under consideration. Case authorities may be helpful for identifying issues of law, but the material facts which will govern the outcome will be determined based on each unique context.

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[at para. 37]

2. Identifying the applicable legal principles with sufficient clarity to identify genuine disputes of material fact typically begins with the pleadings and identifying the constituent or essential elements which comprise an alleged claim or defence. In *Arguson*, Bourgeois, J.A. wrote:

> ... To identify a material fact, it is helpful to ask what needs to be proven to answer the allegations pled by a party. If a fact is necessary to prove the allegation, then it is material. [at para. 37]

Note, as well, that the Civil Procedure Rules mandate that statements of claim and statements of defence include a "concise statement" of the material facts upon which they rely (see, for example, Civil Procedure Rules 4.02(4)(a) and 4.05(4)(c)). While the phrase "genuine issue of material fact" has a meaning specific to motions for summary judgment on evidence, the "concise statement" of material facts in the pleadings will at least reveal the nature of the claim (or defence) and help identify the legal test that the parties must confront and/or the essential elements that may comprise a pleaded claim or defence.

The following appellate cases illustrate the importance of conducting this analysis and understanding the constituent elements of claims or defences being made:

a. By approaching the factual issues from the proper legal vantage point, the motion judge may be able to more surgically isolate and address a particular issue that may be determinative of the entire motion, as occurred in *Tri-County School Board.*[2]

b. The Nova Scotia Court of Appeal decision in *Canada (Attorney General) v. Geophysical Services Incorporated* 2022 NSCA 41 (“***Geophysical Services Incorporated”***), provides a further useful example. In this case, the motion judge granted summary judgment and dismissed the Plaintiff's claims of unlawful interference in economic relations; interference with contractual relations; negligent infliction of economic harm; and unjust enrichment. However, the motion judge allowed the Plaintiff's

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two remaining claims (misfeasance in public office and conspiracy) to continue. On appeal, Beveridge, J.A. upheld the motion judge's decision to dismiss and further allowed the Defendant's appeal of the two claims that survived. Thus, the entire claim was dismissed. In doing so, Beveridge, J.A. separated the various causes of action and began his analysis by breaking down each alleged cause of action into its essential elements (see paras. 57-58 for unlawful interference in economic relations; paras. 75-76 for interference in contractual relations; para. 80 for negligent infliction of economic harm; paras. 89-92 for unjust enrichment; paras. 100-102 for misfeasance in public office; and paras. 117-118 for conspiracy).

3. The caselaw draws certain clear boundaries around what a judge may (and may not) do to resolve factual disputes at a motion for summary judgment. For example:

    a. The Court will not evaluate credibility at a motion for summary judgment (*Coady* at para. 87, point 11). Credibility assessments for civil claims are conducted by the trial judge — not at an interlocutory motion;

    b. The Court will not weigh evidence in the sense of either minimizing or increasing its relative persuasive value. The process of evaluating the comparative strength (or weakness) of evidence should occur at trial (*Hatch Ltd. v. Atlantic Sub-Sea Construction and Consulting Inc.*,2017 NSCA 61 ("***Hatch***"), at paras. 26 - 30). Thus, in *Hatch*, the judge hearing a motion for summary evidence fell into error when he assigned no value whatsoever to an expert opinion that was deemed admissible (*Hatch* at paras. 44 - 45 and 50); and

    c. If material facts need to be “contextualized” to reach a legal conclusion, the motion judge must be careful to ensure that the necessary factual context does not exceed the limits of his/her evidentiary authority – or step into the shoes of the ultimate trier of fact. In *Fraser v MacIntosh*, 2025 NSCA 90, the individual Plaintiff and Defendant were once partners in the same law firm. After the Defendant left, she wrote an email to the individual

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> Plaintiff which was then circulated among the firm's partners. The Plaintiff alleged that the email falsely portrayed him as having acted dishonestly and unprofessionally by misrepresenting her intentions and their discussions to his partners, and as being responsible for driving her from the law firm and the practice of law, thereby casting him as the "villain" responsible for her departure. The alleged defamation occurred in the context of the partnership imploding with the Plaintiff being isolated among his partners. The Court of Appeal allowed the Plaintiffs' appeal and set aside the Order summarily dismissing the claims; cautioning that the dispute involved weighing contextual evidence and drawing factual inferences which were impermissible in a motion for summary judgment (at paras. 20 – 24). Having said that, and while the motion judge's ability to draw inferences may be very limited, there is no blanket prohibition. The motion judge "may make inferences of fact based on the undisputed facts before the court, as long as the inferences are strongly supported by the facts" (*2420188* at para. 53, quoting with approval from the Supreme Court of Canada decision in *Canada (Attorney General) v. Lameman*, 2008 SCC 14, at para. 11 ("***Lameman***"). The same quote from *Lameman* is also included in *Coady* at para. 210, and the principle is confirmed at para. 29 of *Globex Foreign Exchange Corporation v. Launt*, 2011 NSCA 67, at para. 29 ("***Globex***").

4. There is an evidentiary obligation for responding parties to "lead trump" or "put their best foot forward" when marshalling evidence in opposition to a motion for summary judgment. A responding party risks having its claims or defences summarily struck if it fails to make every reasonable, good faith, effort to marshal its evidence. The time is now — not later. Vague representations or presupposed suspicions about what evidence might surface in the future are insufficient (see *Nova Scotia Association of Health Organizations Long Term Disability Plan Trust Fund v. Amirault*, 2017 NSCA 50, at paras. 14 - 15). Similarly, uncorroborated (or bald) factual assertions, even if contained in a sworn affidavit, will not suffice to create a genuine issue of material fact for trial (see, for example, *Coady* at para. 87). Note that these comments assume that the responding party has been provided with a fair opportunity to respond and is not being forced to march forward toward final judgment in circumstances that are

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> sufficiently prejudicial as to require an adjournment (e.g., inadequate disclosure or discovery. See Civil Procedure Rule 13.04(6)(b)).

Question 2: If there is no genuine issue of material fact then: does the challenged pleading require the determination of a question of law, either pure, or mixed with a question of fact?

[24] Question 1 prioritizes questions of fact, either pure or mixed with law. Question 2 shifts the focus to the question(s) of law — either pure, extricable questions of law or questions of law mixed with fact.

[25] The distinction between a pure question of law and a question of law and fact is not always obvious. These types of issues (questions of law versus mixed law and fact) often arise in appellate proceedings when ascertaining the appropriate standard of review. In *Tufts v. Nova Scotia (Workers' Compensation Appeal Tribunal)*,2023 NSCA 50, the Court wrote: "The distinction between a question of law and a question of mixed fact and law is sometimes difficult to discern". (at para. 16) In any event, the task is not to choose between pure questions of law and questions of mixed law and fact. If there are no genuine issues of material fact, the focus turns to questions of law.

Question 3: If there is no genuine issue of material fact and if there is a residual question of law, does the challenged pleading have a real chance of success?

[26] This question mirrors the second stage of the *Hercules Management* test: "If there are no genuine issues of material fact for trial, the Court examines whether the party opposing summary judgment had a real chance of success" (see para. 25 above).

[27] In *Burton*, the Nova Scotia Court of Appeal elaborated on what was meant by a "real chance of success". Saunders, J.A. wrote:

> [44] The phrase "real chance" should be given its ordinary meaning — that is, a chance, a possibility that is reasonable in the sense that it is an arguable and realistic position that finds support in the record. In other words, it is a prospect that is rooted in the evidence, and not based on hunch, hope or speculation. A claim or a defence with a "real chance of success" is the kind of prospect that if the judge were to ask himself/herself the question:
>
> > Is there a reasonable prospect for success on the undisputed facts?
>
> the answer would be yes.

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[at para. 44]

[28] At para. 47(3) of *Globex*, the Court of Appeal provided the following description for this phrase "real chance of success": "This does not mean that the respondent is likely to succeed, but only that she could succeed; the prospect for success cannot be illusory or unrealistic; it must be reasonably grounded in legal principle"

Partial Summary Judgment

[29] Finally, a few words need be said on the question of partial summary judgment and when the Court may summarily disposes of some (not all) of the claims or defences in a proceeding.

[30] Partial summary judgment is an important procedural tool to weed out unmeritorious claims or defences, narrow the issues in dispute, and achieve the goal of both justice and proportionality in civil litigation. The remedy of partial summary judgment was successfully deployed in *Risley v MacDonald*, 2022 NSCA 76, for example. However, the Court must remain live to the fact that partial summary judgment is effective "…because it would make the proceeding less expensive, more efficient, and have no residual prejudicial effect on the remaining claims". (*Kelly v Joudrey*, 2025 NSCA 89 at para. 18, emphasis added) Partial summary judgment may be appropriate in respect of discrete and separate claims or defences that may be properly isolated and are not so intertwined as to interfere with the proper adjudication of the remaining, overlapping legal or factual issues or, for example, prematurely binding the fact-finding authority of the trial judge or risk inconsistent findings. (*Joudrey Estate v Saint Clair Joudrey*, 2025 NSSC 177 and *Proost v Ferncroft Equities Ltd.*, 2014 NSSC 99)

ANALYSIS

THE DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Question 1: Does the challenged pleading disclose a genuine issue of material fact, either pure or mixed with a question of law?

[31] As indicated above, the Plaintiff confirmed during these Motions for Summary Judgment that the alleged causes of action are confined to breach of confidence; breach of fiduciary duty; unjust enrichment; and unlawful interference in economic relations. In addition, Rapid Camp alleges negligent misrepresentation

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as against Dalhousie and Dr. Swan. The Plaintiff's clarification as to the specific causes of action being alleged is helpful because as it better enables the Court to identify and assess those facts which are material to those claims.

[32] Having said that, in my view, the Plaintiff's primary complaints are breach of confidence; breach of fiduciary duty, and negligent misrepresentation. More importantly, for the purposes of this decision, an analysis of these three causes of action exposes how the material facts intertwine and why the underlying claims in this action cannot be summarily dismissed, either entirely or partially.

[33] The Concept lies at the heart of this action. The facts surrounding the Concept's origins, the Concept's description and development over time, the extent to which the Concept moved beyond abstract formulation and acquired a tangible or realizable form from a technical or commercial perspective, the proprietary or confidential nature of the Concept, and the manner in which the Concept influenced the relationship between the parties all while several distinct causes of action are alleged (each of which is comprised of its own independent elements), it is equally true that the Concept lies at the heart of each cause of action. The material facts which are legally consequential or "material" to those distinct causes of action may overlap although, for emphasis, it is important that they not be conflated.

Breach of Confidence or Misuse of Confidential Information

[34] A party alleging a breach of confidence or misuse of confidential information must establish:

1. Information having the necessary quality of confidence;
2. Communication of that information to a defendant in circumstances importing an obligation of confidence; and
3. Unauthorized use or misuse of the information to the detriment of the plaintiff.

(*Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574 ("***Lac Minerals***"); *Cadbury Schweppes Inc. v. FBI Foods Ltd.*, [1999] 1 S.C.R. 142))

[35] In advancing a claim for breach of confidence, the Plaintiff relies heavily on *TDC Broadband Inc. v. Nova Scotia (Attorney General)*, 2018 NSCA 22 ("***TDC Broadband***") and the "springboard doctrine" discussed therein. This decision helps

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further refine and identify the material facts relevant to these Motions for Summary Judgment.

[36] At para. 50 of the decision, the Court of Appeal adopted the following description of the "springboard doctrine":

> 475 A collection of principles that have come to be known as the springboard doctrine are relevant in assessing information that is partly public and partly confidential, or was disclosed in confidence but subsequently made its way into the public domain. The doctrine recognizes that the receipt of information derived from one or more public sources may save a defendant substantial time, effort and expense in searching for and gathering it himself or herself and, therefore, may be regarded as confidential even though the defendant could have collected it from sources available to the public. The information is viewed as having offered the defendant a "springboard" in the sense that it has eliminated the bother of having to do the groundwork to source it out and compile it, and has some degree of value because it has given the defendant a head start in the endeavor at hand.
>
> [citations omitted][3]

[37] Put slightly different, the "springboard doctrine" provides that certain work product may be protected as confidential information if the recipient of this information is saved "substantial time, effort, and expense in search for and gathering it for herself". For that reason, the information in question has been described as a "springboard" or "headstart" (*No Limits Sportswear Inc. v 0912139 B.C. Ltd*. 2015 BCSC 1698 referred to below as "***No Limits***" at para. 19) or "shortcut" (*Equustek Solutions Inc. v Jack*, 2020 BCSC 793) because it eliminates the need to conduct otherwise necessary groundwork and, as such, significantly assists in realizing the underlying market value of the information.

[38] The "springboard doctrine" may apply even if the information in question is "partly public and partly confidential" (*TDC Broadband* at para. 50)

[39] All that said, the "springboard doctrine" does not endow every idea or "brainwave" with legal significance. The Court engages in a functional inquiry which involves an assessment into whether the alleged work or "creation of work product" provided the recipient with "a head start" or a "springboard" and advantage to the detriment of the information-provider". (*TDC Broadband* at para. 50, quoting

[3]The Court's description taken as a quote from the British Columbia Supreme Court decision in *Sateri (Shanghai) Management Ltd. v Vinall*, 2017 BCSC 49 which, in turn, relies upon the earlier Supreme Court of Canada decisions in *Lac Minerals*, *Cadbury* and *No Limits Sportswear Inc. v 0912139 B.C. Ltd*. 2015 BCSC 1698.

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from *No Limits*) Where an alleged a breach of confidence claim involves information that is partly public, several practical and legal implications arise. They include:

1. There must be evidence of some unique further value-added work product such as selecting, analysing, and organizing the information in a manner sufficient to create a market advantage or "head start". Thus, for example, in *TDC Broadband*, the Defendant Province of Nova Scotia obtained a "springboard: by using TDC's work product, namely its developed broadband delivery system, business proposal, technical specifications, and the experiential knowledge accumulated by TDC's principals in solving the technical challenges of delivering rural wireless broadband service. The alleged "springboard" consisted of the Province obtaining a shortcut in designing the broadband project and drafting the RFP, thereby avoiding the time, effort, and expense TDC had invested in developing that knowledge and expertise. In *Seager v. Copydex Ltd. (No. 2)* (1969), [1969] 2 All E.R. 718 (Eng. C.A.), the "springboard" consisted of the inventor's development of a patented carpet grip and, importantly, the private knowledge gained through the trial-and-error process of making the product commercially workable. Although much of the information shared with the Defendant, Copydex, was publicly available, the confidential work product represented the Plaintiff Seager's accumulated knowledge of the difficulties which had to be overcome in making a satisfactory grip. That practical know-how, generated through Seager's efforts and disclosed during negotiations, gave Copydex a head start by sparing it the need to undertake the same developmental groundwork itself. (see summary at para. 50 of *TDC Broadband*);

2. The recipient faces a risk of legal liability if it uses confidential information and fails to "…take special care to use only the material which is in the public domain" (*TDC Broadband* at para. 50, quoting from Lord Denning, M.R.'s decision in *Seager & Copydex Ltd.*, [1967] 1 W.L.R. 923 (C.A.); and

3. Related to the second point and if there is a misuse of confidential information, damages are confined to the specific confidential information that is actually misappropriated or misused, which is not necessarily all confidential information that the plaintiff possessed.

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> *TDC Broadband* illustrates how these principles operate. In that case, the Plaintiff TDC Broadband Inc. developed a wireless broadband system for rural Nova Scotia and shared technical and business information with the Province through its successful Caledonia Project. The trial judge found that the Province improperly used certain confidential information as a "shortcut," including TDC's know-how regarding the practical challenges of deploying fixed wireless broadband in rural areas, aspects of the solutions developed through the Caledonia Project, and information contained in TDC's business proposal. That information assisted the Province in designing the 2006 broadband RFP and supported a claim for breach of confidence. However, the Province did not use or disclose "the most valuable part of the appellant's delivery system", and therefore did not abuse the full benefit of TDC's technology or business model. As a result, damages were limited to the value of the confidential information actually appropriated and used, rather than the broader value of TDC's overall system or any lost opportunity associated with the Province's later 2007 RFP. The Court of Appeal upheld this distinction and the resulting award of $125,000.[4]

Breach of Fiduciary Duty

[40] In *Lac Minerals*, the Supreme Court of Canada issued a divided decision on the issues of fiduciary breach but the majority decision was written by Sopinka, J. (McIntyre and Lamer, JJ concurring)

[41] The majority identified the usual indicia of an *ad hoc* fiduciary relationship as follows:

1. Scope for the alleged fiduciary to exercise discretion or power;

2. The ability unilaterally to exercise that power so as to affect the beneficiary's legal or practical interests; and

[4] On the issue of damages, I also note that the valuation date for damages adopted by TDC's expert was the date upon which the 2006 RFP was issued. As such, TDC was not entitled to damages in connection with the 2007 RFP or the loss of an opportunity to bid in 2007 because, as indicated, TDC's own expert crystallized damages as at the date the 2006 RFP was issued. (at para 47) "Given the appellant's expert treated the initial release as the moment when its damages crystallized, the trial judge can hardly be faulted for doing the same". (at para. 48)

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3. Peculiar vulnerability of the beneficiary to the exercise of that power. Dependency or vulnerability such that the beneficiary is placed at the fiduciary's mercy is essential.

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See also *Frame v. Smith*, [1987] 2 S.C.R. 99; and *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377.

[42] The critical analytical difference between the tort of breach of confidence and breach of fiduciary duty is important. So, for example, a person who obtains confidential information is not automatically vested with fiduciary obligations. Similarly, a breach of confidence does not equate with a fiduciary breach. In *Lac Minerals*, Sopinka, J. expressly warned against collapsing the confidence analysis into the fiduciary analysis. He wrote at para. 135: "the fact that confidential information is obtained and misused cannot itself create a fiduciary obligation".

[43] A breach of confidence focuses on the information (i.e. the nature and character of the information, the circumstances in which it was disclosed, and the alleged misuse). By contrast, a fiduciary breach is fundamentally different and focusses on the relationship between the parties and, more specifically, whether one party possessed a discretionary power over another, creating the requisite vulnerability which was then dishonoured through the disloyal exercise of power. This vulnerability or dependence is the key hallmark of fiduciary obligations. (*Lac Minerals* at para. 132) Writing for the Supreme Court of Canada, Sopinka, J. explained that the parties had not advanced beyond the negotiation stage and that there was no conferring of the discretionary power through which fiduciary obligations might then arise. (at para. 141) The Court also found that any potential vulnerability was self-imposed because the claimant failed to protect itself by securing contractual protections in the form of an undertaking. Sopinka, J. concluded that: "This and the fact that misuse of confidential information is the subject of an alternative remedy [i.e. breach of confidence] strongly militate against the application here of equity's blunt tool [i.e. a remedy for an alleged fiduciary breach]". (at para. 151)

Negligent Misrepresentation

[44] The essential elements of negligent misrepresentation are well-established:

1. There must be a duty of care based on a 'special relationship' between the representor and the representee;

2. The representation in question must be untrue, inaccurate or misleading;

3. The representor must have acted negligently in making said representation;

4. The representee must have relied, in a reasonable manner, on said negligent misrepresentation; and

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

Answers to Question No. 1 (Genuine Issues of Material Fact) and the Issue of Partial Summary Judgment

[45] It is clear that this dispute is rooted in the alleged Concept and the circumstances around which this Concept was allegedly shared, researched, and pursued. Why these facts matter and how they are applied depend on the particular tort being considered. That said, it is helpful to begin the analysis with the following basic chronology. It is not intended to be comprehensive but it helps contextualize the discussion.

April, 2011	The Plaintiff's claims trace back to April 2011, when Mr. Ghosn visited Lebanon for a family funeral and experienced regularly scheduled power outages whereby the local electricity company supplied electrical power in varying cycles, for a maximum of 12 hours per day, making it necessary for families and businesses to obtain a secondary source of power through diesel fueled generators. This trip inspired him to develop methodologies to help mitigate this problem, including the idea of researching and developing a home battery storage system that would work alongside the local electricity grid, be environmentally friendly and have universal application in North American cities and third world countries.

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May, 2011 - 2013	Following this trip to Lebanon, Mr. Ghosn states that he and Mark Yazbek started working together with Rapid Camp, knowing we would require some form of electrical back up for remote temporary modular housing in rural areas, we decided to pursue a research and development grant in Nova Scotia, with the goal of developing a residential battery energy storage system, through our company, Rapid Camp, that would work in collaboration with the local electricity grid. Between 2011 and 2013, Rapid Camp's thoughts around the Concept evolved to the point that they began exploring the prospect of conducting further research.
In or around January, 2013	Mr. Ghosn discussed the Concept with Efficiency Nova Scotia and others. The idea was refined to include charging from the grid during off-peak periods, grid-leveling benefits for utilities, and possible integration with renewable energy sources. He was eventually directed to Dr. Swan of Dalhousie. Mr. Ghosn then approached Dr. Swan regarding the idea of researching and developing a home battery storage system that would work alongside the NSPI grid. They began discussing the prospect of developing a research project to study the issue. Subject to further research, the entitled the project "Peak Battery Systems". To that end, Dr. Swan raised the possibility of applying for an NSERC Engage Grant. However, Rapid Camp was effectively a neophyte start-up and would not qualify as the "Industry Partner" needed to secure NSERC funding. Dr. Swan proposed that NSPI serve as the "Industry Partner". Rapid Camp insists that NSPI's involvement as the "industry partner" served merely to ensure compliance with NSERC's funding requirements and was never intended to displace Rapid Camp's or erase its interest in the project. On the contrary, Mr. Ghosn testifies as to his understanding and expectation that both Rapid Camp and NSPI would benefit from the Engage Grant research and that "these research results would not be shared with

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	anyone other than those participating in the project". (Affidavit of Peter Ghosn sworn February 16, 2026 at paras. 34 – 35)
February 1, 2013	On February 1, 2013, Mr. Yazbek, Mr. Ghosn and Dr. Swan met with representatives of NSPI to discuss the Concept and to confirm their intention to apply for the NSERC Engage Grant for further research into the technical and economic implications.
February 21, 2013	Dr. Swan wrote an email to Mr. McGregor of NSPI, stating that "[i]n consultation with Peter and Mark, it was decided that it would be more appropriate for NS Power to be the industrial partner rather than their companies at present simply given the topic." Mr. Yazbek was copied on this email.
February 27, 2013	Mr. McGregor understood Dr. Swan's February 21, 2013 email to mean that Mr. Ghosn and Mr. Yazbek were stepping away from the entrepreneurial role and expressed some disappointment. In an email sent to Dr. Swan (not copied to Mr. Ghosn or Mr. Yazbek), Mr. McGregor wrote: "I am disappointed to hear that Peter and Mark have decided not to pursue this entrepreneurial path." At discovery, Mr. McGregor explained that his interpretation was to the effect that Rapid Camp decided it would be more appropriate for NS Power to be the industrial partner, not them.
Spring of 2013	Dr. Swan received the NSERC Engage Grant funding with NSPI being the "industry partner", as agreed.
October, 2013 – December, 2013	By October, 2013, Dr. Swan completed the "Engage Grant" research. Dr. Swan provided the results to NSPI as the "industry partner". He did not provide the result to Rapid Camp, having regard to the terms of the grant and the contractual rights afforded NSPI. However, Dr. Swan did reach out to Mr. Ghosn to advise that the idea did not appear to be viable in Nova Scotia. Dr. Swan suggested

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that Rapid Camp shift its focus to multi-unit residential buildings (MURB).

In or around December, 2013

Rapid Camp re-focused their interest on the MURB environment. It prepared a document entitled "PEAK Battery Systems" dated December 4, 2013. NSPI's expert, Dr. Ahmed, described this document as "the most comprehensive presentation of Rapid Camp's concept". It referred to Dr. Swan's research and stated, *inter alia*:

"Dr. Swan began our first round of modelling in the spring of 2013 to test the viability of the residential unit. The modeling determined that the cost savings per kilowatt hour would not outweigh the cost per kilowatt hour to produce the battery in our local market, but could prove to be cost effective in other North American markets where the differential rate is greater. It was determined that addressing peak demand usage in multi-unit residential buildings (MURBs) could offer a significant cost savings relative to battery kilowatt hour cost by addressing the demand billing model and would in turn, have significant impact on the current energy grid in its capacity to shift energy to areas in more critical need as well as allow for more reliance on times of system compromise –i.e. black outs during storm periods"

The document continued:

"Nova Scotia Power is currently involved in the PowerShift program which seeks to mitigate both the demand and WEC generation variations through smart-grid control… The next generation opportunity for residential energy storage is a dedicated battery energy storage system (BESS). Such a BESS consists of a battery and grid-integrated inverter/charger with anti-islanding technology. The BESS would be integrated with the NS

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Power Inc. electricity system via net-metering. It has several advantages over previous thermal storage efforts:

- It can be used year-round…

- It is bi-directional, offering the opportunity to both charge and discharge electricity, and to conduct energy arbitrage ….

- It could also be used a backup electricity source during a power outage"

Finally, the document offered the following "Proposal:

"Through the renewable energy storage laboratory, Peak Battery Systems proposes to collect and analyze electricity usage pattern for MURBS… This data will be used to identify areas of peak usage….to allow for the design and development of a smart grid network which allows for more efficient and effective utilization of energy…. Nova Scotia Power, as the principle provider of energy resources to the province, will benefit from a reduced in need …and the integrity of the overall grid will benefit…."

Ultimately, Mr. Ghosn testifies that "…[Dr.] Swan led me to believe that he and his research team were conducting research on our research project entitled 'technoeconomic feasibility of residential battery energy storage systems'". (Affidavit of Peter Ghosn sworn February 16, 2026 at para. 39) Mr. Ghosn describes this as an actionable misrepresentation.

2014 – 2015 Rapid Camp and Dr. Swan explored other projects including an Industrial Research Assistance Program ("IRAP") administered by NSERC and involving commercial building energy storage systems designed to "clip" peak electrical demand. The concept shifted from residential applications alone toward broader commercial

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> energy-storage opportunities while retaining the central theme of grid-integrated battery storage.

[46] Turning now to the specific torts, I begin the alleged breach of confidential information. In my view, there are significant concerns as to whether the information in question possessed that which is necessary to be deemed "confidential" at law.

[47] There is very little evidence regarding the work product underpinning this idea. As indicated, Mr. Ghosn attests that the Concept initially struck him in 2011 while visiting Lebanon. He subsequently began working on it with Mark Yazbek. However, at discovery examinations, Mr. Ghosn on behalf of Rapid Camp acknowledged that by 2013, the Concept remained "purely an idea". (Discovery Examination of Mr. Ghosn at p. 26). He elaborated that:

> It was a system, so part of the system was the technology that went into it. It was – it was an inclusive system that would include various consultants, designers. It was very preliminary, so it would be hard to construct something that wasn't designed yet.
>
> (Discovery Examination of Mr. Ghosn at p. 28)

[48] Mr. Ghosn (on behalf of Rapid Camp) further acknowledged that he knew others had already developed a battery that could be installed at home. (Discovery Examination of Mr. Ghosn at p. 121) Mr. Ghosn further acknowledged that putting a battery in a house was not his idea. Nor was the idea of using batteries to take advantage of variable (lower) electrical rates during the day. (Discovery Examination Mr. Ghosn at p. 123) In addition, Rapid Camp had neither created a product nor developed a design nor created any schematics, drawings, technical specifications, or protypes. (Discovery Examination of Mr. Ghosn at p. 131) Mr. Ghosn also acknowledged that he did not disclose any proprietary information at the February 1, 2013 meeting with NSPI because "…it wasn't developed yet". He elaborated that "…if an idea is proprietary then I presented that. If – if a product needs to be proprietary then I did not present that because it wasn't developed yet". (Discovery Examination of Mr. Ghosn at p. 131)

[49] Despite these admissions, Rapid Camp argues that its Concept was instilled with a further, original ingredient described as the "inclusivity factor" which, in turn, satisfies the legal requirements for confidential information sufficient to constitute a "springboard" that, in turn, became actionable when misappropriated by the Defendants and misused. At discovery examinations, Mr. Ghosn testified that "I would say that I didn't come up with any of the major components. But the one thing

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that I thought was original was the inclusivity factor". (Discovery Examination of Mr. Ghosn at pp. 123 – 124)

[50] The "inclusivity factor" does not refer to any particular technological product or innovation (e.g. the unoriginal idea of simply using a storage battery in a residence). Instead, it refers to a broader, systemic view of electrical storage and distribution in which residential batteries are specifically designed to operate in conjunction with, and for the benefit of, the local electric utility and the electricity grid itself. Rapid Camp argues that the proposed integration of these various interests (the utility, the consumer, and the battery system itself) into a single business model is an original, confidential and "inclusive" component of the Concept. The clearest explanation comes from Peter Ghosn's discovery examination where he testified that the Concept was intended to include power corporation (e.g NSPI) because involving the utility would allow battery systems to help level electricity use and reduce strain on infrastructure, while also benefiting consumers. He explained that "if you're just designing a simple battery without an inclusive system then you're ... far more vulnerable to competition". (Discovery Examination of Mr. Ghosn at p. 83) By contrast, a more systemic approach (integrated with a utility through licensing and grid participation) created a broader commercial opportunity. Mr. Ghosn stated that the purpose of the original meeting with Nova Scotia Power was to determine whether the utility would endorse an idea that was "inclusive of the power corporation, the end user, the time of day" and integrated with the existing electricity system. (Discovery Examination of Mr. Ghosn at p. 130) Thus, the Concept was more of a systemic shift in which the underlying components or products would ultimately be designed to achieve a desire effect.

[51] In light of the factual admissions by Rapid Camp and its description of the Concept, serious concerns arise regarding the Plaintiff's breach of confidence claim and, in particular, whether the Concept was sufficiently developed and possessed the sort of commercial value sufficient to give the Defendants a "head start" in the market. In other words, there are significant issues around whether at law the Concept could be legally characterized as "confidential information" or a "springboard" – let alone separate and identify any particular misconduct for the purpose of assessing damages. For example, the key "inclusivity factor" described by Mr. Ghosn remained largely undeveloped idea that, depending on the research, may (or may not) possess commercial value.

[52] That said, I am not prepared to make any definitive findings of fact for the purposes of deciding the breach of confidence claim. In the alternative and even assuming these admissions eliminate any genuine issue of material fact regarding

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the tort of breach of confidence, I am not prepared to exercise my discretion under Rule 13.04(6)(a) and decide the remaining question of law.

[53] My reasons are based largely on the conclusion that genuine issues of material fact will clearly remain with respect to other claims. I am not prepared to isolate and consider partial summary judgment for the alleged breach of confidence. In my view, it would not be in the interest of justice to separate the breach of confidence claims and could, in fact, create an unnecessary prejudice by skewing the fact-finding process at trial with respect to the remaining claims. In short, all of these issues are better considered by the judge at the upcoming trial in early 2027. More specifically:

1. Breach of confidence is one of several claims pleaded. As mentioned, the others include breach of fiduciary duty, and negligent misrepresentation;

2. While breach of confidence focussed on the nature and content of the information in question, these remaining torts shift the focus to the nature of the relationships and communications between the parties;

3. Genuine issues of material fact arise when assessing the relationships and communications between the parties that. Those issues involve factual context and credibility assessments that extend beyond the boundaries of the Court's fact-finding authority in a Motion for Summary Judgment. For example, Rapid Camp alleges that the parties agreed to share the research related to the concept and the commercial potential that the research might reveal or unlock. Mr. Ghosn testifies that he understood NSPI's participation as an "industry partner" was an NSERC requirement and, as an electrical utility, essential to a proper assessment as to the "inclusivity factor" that Rapid Camp says endows its Concept with a measure of originality. Rapid Camp further denies that NSPI's participation could actually sever and severely limit its entitlement to information related to research around the Concept or the further opportunity to commercially exploit the results of that research. To that end, for example, Rapid Camp describes the February email exchanges with Dr. Swan and Mr. McGregor of NSPI reveals an actionable misrepresentation and fiduciary breach. Recall that by email dated February 21, 2013, Dr. Swan email Mr. McGregor

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stating that "[i]n consultation with Peter [Ghosn] and Mark [Yazbek, both of Rapid Camp], it was decided that it would be more appropriate for NS Power to be the industrial partner rather than their companies at present simply given the topic". Mr. Yazbek was copied on this email. Mr. Yazbek and Rapid Camp say that they understood that they simply needed to highlight NSPI's involvement as essential to both NSERC's funding requirements and, more generally, a proper assessment as to the potential of the Concept. Rapid Camp further says that this understanding was not only shared with the Defendants but impressed upon the Defendants fiduciary obligations because Rapid Camp had now become dependent upon or at the mercy of the Defendants to act in accordance with this shared understanding. Then, on February 27, 2013, Mr. McGregor replied to Dr. Swan confirming a contrary understanding that Mr. Ghosn and Mr. Yazbek were stepping away from the entrepreneurial role and expressed some disappointment. He wrote: "I am disappointed to hear that Peter [Ghosn] and Mark [Yazbek] have decided not to pursue this entrepreneurial path". Neither Mr. Ghosn nor Mr. Yazbek were copied on this response. Rapid Camp alleges that the Defendants knew or ought to have known, at a minimum, that a misunderstanding had arisen and was being improperly exploited. They say that Dr. Swan's original email revealed a misrepresentation that was now being exploited. In fact, they say, Rapid Camp had not abandoned their pursuit of this "entrepreneurial path" at all. On the contrary, Rapid Camp said that it remained invested in the research project, and that the Defendants knew it or ought to have known it. Rapid Camp further says that this communication and the NSERC application set in motion a collaborative effort between Dalhousie and NSPI from which Rapid Camp was improperly excluded, to their detriment and in breach of underlying fiduciary obligations;

4. I recognize that there is other evidence that challenges Rapid Camp's allegations – including documentation in Rapid Camp's possession regarding the terms under which NSERC "Engage Grant" funding is given and, as well, discovery testimony. For example, at discovery, Mr. McGregor explained that his February 27, 2013 email simply confirmed that it would be more appropriate for NS Power to be the industrial partner, not Rapid Camp.

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Additional issues arise regarding damages and, more specifically, what type of damages might arise from research into a Concept that was undeveloped and, at least in terms of the "Engage Grant" project was initially deemed unviable to the point that Rapid Camp's attention turned to its application in another area (MURBs). There is other evidence which, when weighed in the full context of the record, may bear upon Rapid Camp's claims. For clarity and emphasis, I make no determination as to the strength of these allegations by Rapid Camp regarding its communications and relationships with the Defendants. These reasons should not be interpreted otherwise. For present purposes, I simply conclude that genuine issues of material fact arise with respect to the remaining claims. The request for summary judgment in respect of those remaining causes of action clearly cannot proceed on the basis of the evidence before the Court;

5. The problem with granting partial summary judgment regarding the alleged breach of confidential information while leaving the remaining, more factual complex causes of action is that all Rapid Camp's claims ultimately originate with, and intertwine, around the Concept. To an extent, they are all informed by the question of whether the Concept (or communications between the parties involving the Concept) might be recognized at law as deserving legal protection. However, the reason and degree to which the Concept exerts an influence on the legal conclusion shifts, depending upon the cause of action being considered;

6. This conclusion becomes clearer when reviewing the Defendants' submissions on summary judgment. Consider the allegation of negligent misrepresentation. The Defendants argue that this claim is ultimately dependent on the existence of proprietary information or a proprietary business model belonging to Rapid Camp. And they repeat, among other things, that the Plaintiff's claims cannot succeed because they are dependent on the existence of a demonstrable, identifiable proprietary interest. However, they say, the alleged Concept was "inscrutably vague" (Dalhousie written submissions at para. 56) and repeat that that "Rapid Camp has never, however, been able to identify any Proprietary Information or Business Model that is at issue". (NSPI written submissions at para. 8) With respect to

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the alleged fiduciary breach, Dalhousie relies on Lac Minerals and confirms that a fiduciary relationship requires vulnerability and dependency. However, they submit: "There is no evidence that the Dal Applicants ever had any power or discretion over the Plaintiff, because nothing was ever provided by the Plaintiff." (Dalhousie written submissions at para. 67) NSPI also circles back to the same point, stating that any alleged fiduciary obligations rest on a premise that the Plaintiff possessed and disclosed proprietary information, a premise the defendants say collapses on the evidence;

7. Respectfully, however and as indicated, the allegations of negligent misrepresentation and fiduciary breach are more factually complicated and cannot be reduced to a single finding regarding the nature and content of the Concept. They turn on other issues focussed on the communications and relationships between the parties. Unlike the breach of confidence allegations, these issues are not as easily resolved by examining the nature and content of the alleged confidential information. They engage questions of credibility and factual context which go beyond the motion judge's authority at summary judgment;

8. Again, I recognize that the Concept looms large and insinuates itself into Rapid Camp's claims generally. However, its impact and influence moves depending on the cause of action and factual focus. To make final determinations regarding the Concept for the purpose of examining partial summary judgement regarding the breach of confidence claim alone would, in my view, will be prejudicial and improperly skew the trial for the claims that remain; and

9. All of these overlapping factual issues may improperly and prematurely bind the trial judge and exert a "residual prejudicial effect on the remaining claims." (*Kelly v Joudrey*, 2025 NSCA 89 at para. 18). They are better considered and determined by the trial judge in June 2027 who will be in a better position to examine all of the evidence and weigh credibility.

Rapid Camp's Motion for Summary Judgment

[54] For the reasons expressed above, it will be clear that Rapid Camp's Motion for Summary Judgement must also fail. The Defendants have raised very serious

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factual and legal issues to be determined including the viability of its claim for breach of confidence and, more generally, the extent to which the Concept can even give rise to an actionable claim. Again, all of these issues are better examined by the trial judge in light of the totality of the evidence, including oral testimony from the parties.

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CONCLUSION

[55] The Defendants' Motions for Summary Judgment are dismissed.

[56] The Plaintiff's Motion for Summary Judgment is dismissed

COSTS

[57] As indicated, both the Defendants' Motion for Summary Judgment and the competing Plaintiff's Motion for Summary Judgment are dismissed.

[58] Given the mixed success (or lack of success), neither party can claim success. At the same time, this was a complicated motion involving preliminary motions, cross-examination, complex factual and legal issues, and extensive oral argument. Costs were significant.

[59] In terms of quantum, merely applying the applicable Tariff would not be appropriate. The circumstances were sufficiently unique and complicated such that the assumptions embedded in the Tariff would achieve justice.

[60] I award the sum of $15,000, in the cause. Whichever party prevails at trial shall be entitled to these costs, payable forthwith.

Keith, J.