

SUPREME COURT OF NOVA SCOTIA

Citation: *Hall v. The Bank of Nova Scotia*, 2026 NSSC 200

Date: 20260624

Docket: *Hfx*, No. 545266

Registry: Halifax

Between:

Mike Ryan Hall, Scott Gordon John Hall, and Matthew Hall

Plaintiffs

v.

The Bank of Nova Scotia, Scotia Securities Inc.,
and The Bank of Nova Scotia Trust Company (Scotia Trust)

Defendants

Decision

Judge:

The Honourable Justice Glen G. McDougall

Heard:

February 24, 2026, in Halifax, Nova Scotia

Counsel:

Mike Hall Self-representing, for the Plaintiffs
Peter Rogers and Noah Yao, for the Defendants

By the Court:

[1] For the reasons that follow I will allow the motion for summary judgment and set aside the Plaintiffs' claim.

INTRODUCTION

[2] The Defendants, The Bank of Nova Scotia, Scotia Securities Inc., and The Bank of Nova Scotia Trust Company (Scotia Trust) (collectively referred to as "Scotia"), move for summary judgment on the pleadings pursuant to *Civil Procedure Rule* 13.03. They look to dismiss the Plaintiffs' Amended Statement of Claim on the basis that it discloses no reasonable cause of action against them and is unsustainable.

[3] The Plaintiffs, Mike Ryan Hall, Scott Gordon John Hall, and Matthew Hall (collectively referred to as "the Halls") are sons of the late Gordon Hall. Mr. Gordon Hall died on January 11, 2021. His wife, Ms. Rose Dunphy, as of the date of this hearing, is the administrator of Gordon Hall's estate. The Plaintiffs are children from a previous marriage and have no biological relationship to Ms. Dunphy.

[4] Mr. Gordon Hall, and subsequently his estate, are clients of Scotia. The Plaintiffs themselves, the three sons of Mr. Gordon Hall, are not, nor have ever been, clients of Scotia.

[5] The Plaintiffs' action against Scotia arises from representations made by Scotia to their late father regarding a Life Income Fund ("LIF"). A LIF is a registered account used to provide income from locked-in pension assets. It is commonly established by transferring funds from a Locked-In Retirement Account ("LIRA") when an account holder reaches the age at which income withdrawals are permitted (Pension Benefits Regulations NS Reg. 200/2015, PT. 6, s. 205). The Plaintiffs are named beneficiaries of this LIF.

[6] In accordance with Pension Benefits Regulations NS Reg. 200/2015, Sched. 4A, s. 15, upon death, the remaining LIF balance is payable to a surviving spouse, determined as of the date of death. Only if there is no spouse, or if the spouse is legally disentitled, such as through a valid written waiver, may the benefit be paid to a named beneficiary. If there is no valid spouse or named beneficiary, the proceeds are payable to the owner's estate. The value of the benefit includes all investment

earnings including unrealized capital gains and losses up to the date of payment and may be transferred to an RRSP or RRIF in accordance with the federal *Income Tax Act*.

[7] No spousal waiver was signed by Ms. Dunphy, and thus the LIF by default was payable to her. The Plaintiffs allege this contradicted their understanding that they would receive the beneficiary shares directly. They now claim they have suffered financial loss from the actions of Scotia in the handling and management of their late father's LIF and seek damages from the bank.

ALLEGED BACKGROUND

[8] The Notice of Action and Statement of Claim was filed on July 25, 2025. An amended Notice of Action and Statement of Claim was subsequently filed on August 1, 2025. The Defence was filed on August 15, 2025.

[9] The events are distilled within the pleadings and the briefs for this summary judgment motion by both parties. An overview, paraphrasing this information, is as follows:

- On January 13, 2017, an LIF account was opened by Mr. Gordon Hall at Scotia. The LIF initially named four equal beneficiaries, being the three Hall brothers and Gordon Hall's spouse, Rose Dunphy. At this time in 2017, no spousal waiver was signed.
- In March 2018, the Plaintiffs allege Mr. Gordon Hall exhibited signs of cognitive decline. They allege his medical records as referenced in the Probate proceeding indicated cognitive impairment, memory loss, executive dysfunction, and failed memory tests. Scotia denies having any knowledge of this medical diagnosis or records in 2018 and state they were not advised of any such medical diagnosis.
- On September 14, 2018 Mr. Gordon Hall signed documents altering the beneficiary percentages on the LIF. Ms. Dunphy's share was increased. Scotia further states that at this time, Mr. Gordon Hall made all his bank accounts with Scotia joint accounts with Ms. Dunphy.
- On October 10, 2018, Ms. Dunphy was appointed as Power of Attorney (POA) for Mr. Gordon Hall. On January 11, 2019 she was added as POA on the LIF account.

- On June 13, 2019 Ms. Dunphy wrote two cheques for \$8,600 and \$10,000 to Mike Hall and Scott Hall respectively. In the memo line it stated, “Advance payment as part of inheritance from Gord Hall”.
- On January 11, 2021 Mr. Gordon Hall passed away intestate.
- In or around March 2021 the Plaintiffs and Ms. Dunphy asked Scotia about the LIF account, however Scotia advised that without an appointed estate representative, Scotia would be unable to disclose further information.
- The Plaintiffs and Ms. Dunphy filed proceedings in Probate Court of Nova Scotia disputing who should be the administrator of Mr. Gordon Hall’s estate. An Order dated December 8, 2023 appointed Ms. Dunphy as the administrator of the estate.
- The Plaintiffs allege that in April 2022 Ms. Dunphy’s legal counsel wrote to counsel for Scott Hall and Matthew Hall stating that the LIF would be paid to the named beneficiaries and not through the estate. The Plaintiffs further allege that on August 29, 2022 Ms. Dunphy reaffirmed in a reply affidavit that the LIF investment would be distributed to the named beneficiaries as informed by a bank manager of Scotia.
- The Plaintiffs allege that on November 20, 2023, during Probate proceedings, the mutual fund advisor responsible for the LIF account testified that the beneficiary designation documents would dictate the payment of the LIF account upon Mr. Gordon Hall’s death.
- On February 12, and 18, 2025, text messages from Ms. Dunphy to Plaintiff Mike Hall indicated that Scotia had confirmed the paperwork was complete and beneficiaries would be contacted to arrange payment.
- In May to July of 2025, Ms. Dunphy contacted Scotia about the LIF. In response, Scotia advised that the funds in the LIF had to be paid out to Ms. Dunphy as the surviving spouse of Mr. Gordon Hall.
- On July 2, 2025, the Plaintiffs allege they received a photo from Ms. Dunphy, which they believed to be an email from Scotia’s legal counsel to Ms. Dunphy, indicating that under Nova Scotia law and Scotia policy, the entire LIF was payable to the spouse by default, due to the absence of a spousal waiver.
- The Plaintiffs allege this contradicted prior representations made by bank representatives, which they relied on to form the belief they would

receive their designated beneficiary shares directly and the proceeds would not form part of the estate or be subject to default spousal entitlement provisions. As a result, they did not pursue legal or financial remedies at the conclusion of the estate administration proceedings.

- The Plaintiffs allege that, if Ms. Dunphy were to sign a spousal waiver at this stage, the LIF funds would be transferred into the estate of Mr. Gordon Hall. As Mr. Gordon Hall died intestate, such a transfer would render the funds subject to distribution under the Nova Scotia *Probate Act*, S.N.S. 2000, c. 31, which according to the Plaintiffs, would diminish their expected inheritance.
- As to the date of this motion, being February 23, 2026, the LIF has not been distributed to anyone. There is an interlocutory injunction currently in place to prevent its distribution.
- The Plaintiffs have remained adamant during this matter that they are not seeking any relief or declaration against Ms. Dunphy or the estate.
- Aside from this action, one of the Plaintiffs, Mike Hall, has brought a separate Application in Probate Court against Ms. Dunphy seeking her removal as Estate Administrator.

CLAIM AGAINST SCOTIABANK

[10] As identified by the Plaintiffs within paragraph 4 of the Amended Notice of Action and Statement of Claim, and noted in the Defendants' brief, the Plaintiffs' summarized claims against the Defendants are as follows:

“The claim is based upon: a) The common law tort of misrepresentation, including where a defendant makes a false or misleading statement that induces the plaintiff to act to their detriment; b) The tort of negligent misrepresentation including where a defendant, in the course of providing information or advice, fails to take reasonable care to ensure its accuracy, causing the plaintiff to reasonably rely on it to their detriment; c) The common law duty of care owed by financial professionals to clients; d) Statutory obligations imposed under National Instrument 31-103, including: i) Section 13.2 (Know Your Client); ii) Section 13.2.01 (Trusted Contact Person and Vulnerable Client Protection); iii) Section 13.3 (Suitability Determination); e) Fiduciary and statutory duties owed by trustees in the management of registered accounts; f) The obligation of agents and financial representatives to act with clarity, transparency, and due diligence when dealing with legally binding beneficiary designations.”

LAW

[11] Summary judgment on pleadings is governed by *Civil Procedure Rule* 13.03, which states:

13.03 Summary judgment on pleadings

- (1) A judge must set aside a statement of claim, or a statement of defence, that is deficient in any of the following ways:
 - (a) it discloses no cause of action or basis for a defence or contest;
 - (b) it makes a claim based on a cause of action in the exclusive jurisdiction of another court or tribunal;
 - (c) it otherwise makes a claim, or sets up a defence or ground of contest, that is clearly unsustainable when the pleading is read on its own.
- (2) The judge must grant summary judgment of one of the following kinds, when a pleading is set aside in the following circumstances:
 - (a) judgment for the party making a claim, when the statement of defence is set aside wholly;
 - (b) dismissal of the proceeding, when the statement of claim is set aside wholly;
 - (c) allowance of a claim, when all parts of the statement of defence pertaining to the claim are set aside;
 - (d) dismissal of a claim, when all parts of the statement of claim that pertain to the claim are set aside.

[12] The test for summary judgment on the pleadings was succinctly stated by our Court of Appeal in the decision of *Howe v. Rees*, 2024 NSCA 16:

[46] The high threshold for dismissing claims under *Rule* 13.03 was recognized in *Walsh v. Atlantic Lottery Corporation*, 2015 NSCA 16 where MacDonald C.J.N.S. held:

[7] Justice LeBlanc was well aware of the heavy burden faced by the Government. It would have to establish that, assuming every alleged fact to be correct, the claim still would have no chance of success. He observed:

[16] Summary judgment on the pleadings should not be granted lightly. A party whose action is summarily dismissed under Rule 13.03 will be denied his or her day in court. The harsh nature of the remedy demands that the applicant meet a heavy burden. I must be satisfied, even after assuming that all allegations contained in the pleadings are true without the need to call evidence, that the claim

“is certain to fail”, or is “absolutely unsustainable” or “discloses no reasonable cause of action”: *Cape Breton (Regional Municipality) v. Nova Scotia (Attorney General)*, 2009 NSCA 44 at para. 17, *Cragg v. Eisener*, 2012 NSCA 101 at para. 9.

[47] Similarly, in *Cragg v. Eisener*, 2012 NSCA 101, Saunders J.A. wrote:

[9] The approach taken when deciding a motion for summary judgment “on the pleadings” is different. There, the judge’s inquiry is limited to an examination of the pleadings. No evidence on the motion is permitted. The “test” is drawn from language found in the jurisprudence involving motions to strike out pleadings. In other words, to grant summary judgment on the pleadings, the judge must be satisfied that the claim (or defence, as the case may be) “is certain to fail” or “is absolutely unsustainable” or “discloses no cause of action or basis for a defence”. [...]

[Citations omitted.]

[48] In order to grant Mr. Larkin’s motion for summary judgment, the motion judge would have to be satisfied Mr. Howe’s action was “absolutely unsustainable” or “discloses no reasonable cause of action”. He did so after embarking on an inquiry about the limitation period for all of the actions, including malicious prosecution.

[13] In the same year as Howe, the test was reiterated by Bryson, J.A., in *Halifax County Condominium Corporation No. 277 v. Halifax Regional Water Commission*, 2024 NSCA 1:

[13] In a summary judgment motion on pleadings, the court must assume the truth of the facts pleaded.¹ Whether pleadings disclose a valid cause of action is a question of law.²

[14] Summary judgment can be granted if the challenged pleadings disclose "no cause of action or defence", or make a claim that is "absolutely unsustainable", or "certain to fail".³

[15] Provided the plaintiff pleads facts material to the cause of action, the claim should not be struck.⁴ In *Hunt v. Carey*, the Supreme Court explained judicial reticence in the absence of certainty that a claim could not succeed:

[...] [I]f there is a chance that the plaintiff might succeed, then that plaintiff should not be "driven from the judgment seat". Neither the length and complexity of the issues of law and fact that might have to be addressed nor the potential for the defendant to present a strong defence should prevent a plaintiff from proceeding with his or her case. [...]⁵

[Footnotes omitted].

[14] The test for summary judgment was parsed out in *Nova Scotia v. Carvery*, 2016 NSCA 21, where Fichaud, J.A., cited the Supreme Court of Canada as follows:

[24] Recently, in *R. v. Imperial Tobacco Canada Ltd.*, [2011 SCC 42 \(CanLII\)](#), [2011] 3 S.C.R. 45, at para. 18, the Chief Justice for the Court said it was “useful to review the purpose of the test and its application”, then continued:

[19] The power to strike out claims that have no reasonable prospect of success is a valuable housekeeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial.

.....

[21] Valuable as it is, the motion to strike is a tool that must be used with care. The law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. ... [citing *Donoghue v. Stevenson*, 1932 CanLII 536 (FOREP), [1932] A.C. 562 (H.L.) and *Hedley Byrne & Co. v. Heller & Partners, Ltd.*, [1963] 2 All E.R. 575 (H.L.)] Therefore, on a motion to strike, it is not determinative that the law has not yet recognized the particular claim. The court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial.

[15] The principles governing a motion for summary judgment on the pleadings were particularized in *Keleher v. Nova Scotia (Attorney General)*, 2019 NSSC 375 (leave to appeal granted but appeal ultimately dismissed) by Keith J.:

[44] Four key principles govern motions for summary judgment on the pleadings:

- a. For the purposes of the motion to strike, the facts contained in the challenged pleading must be taken as being proven and true (*Homburg Canada Inc v Halifax (Regional Municipality)* (2003), NSJ No 194, (2003), [2003 NSCA 61 \(CanLII\)](#), 216 NSR (2d) 67 (NSCA), at para 7).
- b. Although the pleaded facts are deemed to be true, a plaintiff cannot simply stand on the mere possibility that the material facts necessary to sustain a cause of action might eventually pop up. A plaintiff “must plead fact material to the causes of action they assert” (*Canada (Attorney General) v Walsh Estate*, [2016 NSCA 60](#), [2016] NSJ No 298, at para 18);
- c. It must be “plain and obvious” that the claims as pleaded cannot succeed because, for example, “the pleading, on its face, discloses no reasonable cause of action; or ... the claim is absolutely unsustainable; or ... it is certain to fail because of a radical defect” (*Hunt v Carey Canada Inc*, [1990 CanLII 90 \(SCC\)](#), [1990] 2 SCR 959, at paras 30-34; *Homburg Canada Inc. v Halifax (Regional Municipality)*, *supra*, at para 7)

d. “The power to strike should be used with care. The law evolves. The court should be generous and err on the side of permitting novel, but arguable, claims to proceed” (*Canada (Attorney General) v Walsh Estate, supra*, at para [18](#)).

[16] Whether or not to grant summary judgment on the pleadings is not usually a matter of discretion. If the facts pleaded do not satisfy the legal requirements of the claimed cause of action, summary judgment must follow (*Holloway Investments Inc. v. Hardit Corporation*, 2020 NSSC 132 at para. 29).

[17] Further, as stated by Hunt J. in *Mehta v. Wolfville Animal Hospital*, 2021 NSSC 363:

[34] The law demands that I bring to an end a legal pleading that has no chance of success. As I noted in *MacCallum v. Langille (Estate of)*, 2021 NSSC 229:

“Where there is but one outcome based on the law and uncontested facts, summary judgment should follow: *HRM v. Annapolis Group Inc.*, 2021 NSCA 3.”

[18] Therefore, for this motion for summary judgment to be granted, I must be satisfied that the claim is certain to fail, or discloses no cause of action or basis for a defence, or is absolutely unsustainable.

[19] As cited by Norton J. in *MacGregor’s Custom Machining Limited v. Sanikiluaq Development Corporation*, 2021 NSSC 139, when assessing a motion for summary judgment on the pleadings, reference must be made to the requirements for pleadings contained in *Civil Procedure Rules* 38.02 and 38.03:

38.02 General principles of pleading

- (1) A party must, by the pleading the party files, provide notice to the other party of all claims, defences, or grounds to be raised by the party signing the pleading.
- (2) The pleading must be concise, but it must provide information sufficient to accomplish both of the following:
 - (a) the other party will know the case the party has to meet when preparing for, and participating in, the trial or hearing;
 - (b) the other party will not be surprised when the party signing the pleading seeks to prove a material fact.
- (3) Material facts must be pleaded, but the evidence to prove a material fact must not be pleaded.

- (4) A party may plead a point of law, if the material facts that make it applicable are also pleaded.

38.03 Pleading a claim or defence in an action

- (1) A claim or defence in an action, and a claim or defence in a counterclaim, crossclaim, or third party claim, must be made by a statement of claim that conforms with Rules 4.02(4) and 4.03(5), of Rule 4 – Action, or a statement of defence that conforms with Rule 4.05(4) or Rule 4.
- (2) The following additional rules of pleading apply to all pleadings in an action:
- (a) a description of a person in pleadings must not contain more personal information than is necessary to identify the person and show the person's relationship to a claim or defence;
 - (b) claims or defences may be pleaded in the alternative, but the facts supporting an alternative claim or defence must be pleaded distinctly;
 - (c) a pleading that refers to a material document, such as a contract, written communication, or deed must identify the document and concisely describe its effect without quoting the text, unless the exact words of the text are themselves material;
 - (d) a pleading that alleges notice is given must state when the notice was given, identify the person notified, and concisely describe its content without quoting the text, unless the exact words of the text are themselves misappropriation, or malice.
- (3) A pleading must provide full particulars of a claim alleging unconscionable conduct, such as fraud, fraudulent misrepresentation, misappropriation, or malice.

[20] Ultimately, the power to dismiss pleadings which have no reasonable prospect of success serves to improve the administration of justice by reducing both time and costs with associated ongoing litigation (*Palmer v. Gurney*, 2025 NSSC 367 at para. 12).

[21] The Plaintiffs made a preliminary objection to oppose the dismissal of their claim, stating that according to Rule 13.03(3) the Defendants incorrectly filed an affidavit as part of their motion material. This Rule reads:

- (3) A motion for summary judgment on the pleadings must be determined only on the pleadings, and no affidavit may be filed in support of or opposition to the motion.

[22] The affidavit simply provides a procedural history of the matter. It does not offer anything beyond this. It attaches as exhibits the various pleadings in this action (being the Notice of Action and Statement of Claim, Amended Notice of Action and

Statement of Claim, and Notice and Statement of Defence). These pleadings had all been previously filed with the Court. As such, it neither supports nor does it offer anything in opposition to the motion. It simply helps to summarize the procedural steps that have been taken to advance the litigation.

[23] In the recent decision of *Palmer v. Gurney*, 2025 NSSC 367, a motion for summary judgment was granted and an action dismissed where motion materials included an affidavit. On the issue, Norton J. at the outset of the hearing addressed the presence of the affidavit but acknowledged he had not given it any consideration as he could not under Rule 13.03(3) (at para. 2).

[24] I have taken the same approach as Norton J. in *Palmer* and therefore did not give the affidavit as submitted by the Defendants any consideration in coming to my decision.

ISSUE

[25] Should the Defendants' motion for summary judgment on the pleadings be granted, thus resulting in the Plaintiffs' action being set aside?

ANALYSIS

[26] Regardless of whether the facts as pled are true or not, there must be an existence of a special relationship between the parties giving rise to a duty of care. Before there can be a breach of a duty, there must be a duty. For the reasons that follow, I find no special relationship exists in this action and therefore the proceeding is doomed to fail.

[27] To, again, restate their Amended Notice of Action and Statement of Claim, the Plaintiffs claimed against Scotia for the following:

- “The claim is based upon: a) The common law tort of misrepresentation, including where a defendant makes a false or misleading statement that induces the plaintiff to act to their detriment, b) the tort of negligent misrepresentation, including where a defendant, in the course of providing information or advice, fails to take reasonable care to ensure its accuracy, causing the plaintiff to reasonably rely on it to their detriment; c) the common law duty of care owed by financial professionals to clients; d) statutory obligations imposed under National Instrument 31-103 including i) Section 13.2 (Know Your Client); ii) Section 13.2.01 (Trusted Contact Person and Vulnerable Client Protection); iii) Section 13.3 (Suitability Determination); e) Fiduciary and statutory duties owed by trustees in the management of registered accounts; f) The obligation of agents and financial representatives to act with clarity,

transparency, and due diligence when dealing with legally binding beneficiary designations.”

[28] Although the Plaintiffs plead these six causes of action, the Defendants paraphrased these into four categories: 1) misrepresentation; 2) negligence; 3) breach of fiduciary duty; and 4) alleged contravention of the National Instruments. I find this is a proper breakdown of the Plaintiffs’ claims against the Defendants.

THE PLAINTIFF’S ARGUMENT

[29] The Plaintiffs’ claim in negligence, misrepresentation, and breach of fiduciary duty raises the question of whether they have a cause of action against Scotia. It would be on the basis that Scotia, in the course of providing information or advice as related to the LIF, failed to take reasonable care to ensure its accuracy, causing the Plaintiffs to reasonably rely on it to their detriment.

[30] The Plaintiffs argue Scotia made inconsistent or inaccurate statements about how the LIF would be distributed, failed to disclose the legal effect of spousal default rules, failed to confirm the suitability of the portfolio and beneficiary structure at the time of the changes, failed to confirm if Mr. Gordon Hall’s cognitive capacity included the ability to give informed consent, and failed to appoint a trusted contact person despite signs of vulnerability.

[31] The Plaintiffs argue the Defendants have improperly cast this claim as an estate-beneficiary action while they maintain that they bring their claim in their individual and collective capacity. They state they did not commence this proceeding as prospective estate beneficiaries/heirs. The Plaintiffs state their claims for negligent misrepresentation and duty of care are based on the *Anns/Cooper* framework which requires a court to assess foreseeability and proximity. They state for cases of pure economic loss, proximity is assessed by examining the defendant’s undertaking and the plaintiff’s reasonable reliance on that undertaking, which is a contextual inquiry that turns on the particular relationship between the parties rather than on formal client status. Further, the Plaintiffs submit applicable jurisprudence has rejected categorical exclusions of relationships in favour of a contextual assessment of proximity.

[32] The Plaintiffs clarified in their written submission that they did not plead National Instrument 31-103 (NI 31-103) as an independent cause of action, but as part of the statutory and regulatory context informing the standard of care and the scope of the Defendants’ professional undertakings.

[33] With regards to a fiduciary duty, the Plaintiffs in their Amended Statement of Claim, pled fiduciary and statutory duties are owed by trustees in the management of registered accounts.

[34] Ultimately, the Plaintiffs allege their claim discloses an arguable cause of action and any suggestion that reliance was unreasonable, unnecessary, or displaced by legislation raises questions of mixed fact and law that cannot be resolved on a Rule 13.03 motion.

[35] The Halls further request that if the Court has concerns regarding their pleadings, they seek an adjournment of the motion pursuant to Rule 13.03(4) with leave to amend the pleadings as necessary.

[36] In their submission they have relied on *Ryan v. Whitehead*, 2018 NSSC 102, *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 (SCC), *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63, *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 (SCC), *Deep Cove Marine v. Romkey*, 2009 NSSC 250, *Hercules Managements Ltd. v. Ernest & Young*, [1997] 2 S.C.R. 165 (SCC), and *Cooper v. Hobart*, 2001 SCC 79.

THE DEFENDANTS' ARGUMENT

[37] Scotia states it did not owe a duty of care to the Plaintiffs. It argues there is no special relationship arising between it as the bank and the Plaintiffs as prospective estate beneficiaries. With regards to the Plaintiffs' claims for misrepresentation, negligence, and breach of fiduciary duty, the Defendants state there must be the existence of a special relationship between the parties giving rise to a duty of care. In this action, there is no such relationship, and as such the Defendants do not owe any common law or statutory duty to the Plaintiffs. They rely on *Tymkow v. Rusnak*, [1992] A.J. No. 1055 (Alta. Master) and *MacDonald v. Taubner*, 2010 ABQB 60 to support this position.

[38] With regards to the fiduciary duty, Scotia submits, as similar to the Plaintiffs' negligence and misrepresentation allegation, the fiduciary duty claim does not exist as there is no relationship between the parties. The Defendants argue this is because they cannot exercise discretion or power over the Plaintiffs, Scotia cannot unilaterally exercise that power or discretion so as to affect the Plaintiffs' legal or practical interests, and the Plaintiffs are not peculiarly vulnerable or at the mercy of Scotia. They cite *Frame v. Smith*, [1987] 2 S.C.R. 99, 1987 (SCC), to make this argument. They also cite *Canadian Aero Service Ltd. v. O'Malley* (1973), [1974] S.C.R. 592, 40 D.L.R. (3d) 371 (SCC).

[39] On the Plaintiffs' claim in respect to the alleged contravention of the National Instruments, the Defendants submit that the National Instruments are regulatory instruments by Canadian security regulators to promote consistency and standardization across jurisdictions. Scotia argues the National Instruments do not create a private right of action for lay persons.

NEGLIGENCE AND MISREPRESENTATION

[40] The tort of negligence has been long recognized in Canada. There are four elements, as confirmed in the leading Supreme Court of Canada decision of *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27. These are; (1) that the defendant owed the plaintiff a duty of care; (2) that the defendant's behaviour breached the standard of care; (3) that the plaintiff sustained damage; (4) that the damage was caused, in fact and in law, by the defendant's breach."

[41] There is a five-part analysis to prove negligent misrepresentation, as stated in the Supreme Court of Canada decision of *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 (SCC):

[34] The required elements for a successful *Hedley Byrne*, supra, claim have been stated in many authorities, sometimes in varying forms. The decision of this court cited above suggest five general requirements: (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 misrepresentation; (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...

[emphasis added].

[42] Thus, for both the torts of negligence and negligent misrepresentation, there must be a duty of care. For a duty to arise, there must be a special relationship that is so close that one may reasonably be said to owe the other a duty to take care not to injure the other (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 citing *McAlister (Donoghue) v. Stevenson*, [1932] A.C. 562 (U.K. H.L.) at para. 4).

[43] An existence of this duty of care, which represents the first step of the analysis for both torts, is what this motion for summary judgment hinges on.

[44] For claims of negligence and misrepresentation, the onus is on the plaintiff to prove the elements of their claim, including the establishment of a duty of care. For

negligence, this was confirmed in the seminal Supreme Court of Canada decision of *Childs v. Desormeaux*, 2006 SCC 18 (at para. 12, citing *Odhavji Estate v. Woodhouse*, 2003 SCC 69 at para. 44). This is also the case for claims of negligent misrepresentation (see *McKay Career Training Inc. v. Baker*, 2018 SKCA 83 at para. 20 citing *Lucien Grouix & Son Planning & Saw Mill Ltd. v. Nipissing Forest Resource Management Inc.*, 2007 ONCA 801 at para. 4).

[45] The *Anns/Cooper* test is used by Canadian courts to determine whether a duty of care exists. This general framework to assess a duty of care should be used for both negligence and negligent misrepresentation cases (*Hercules Managements Ltd. v. Ernst & Young*, [1997] 2 S.C.R. 165 (SCC) at para. 21).

[46] As affirmed by the Supreme Court of Canada in *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63, the *Anns/Cooper* test requires the court to ask: (1) whether a *prima facie* duty of care exists between the parties; and (2) if so, whether there are residual policy considerations that negate the imposition of this duty (at para. 19).

[47] At the first stage, a *prima facie* duty of care is recognized where proximity and reasonable foreseeability of injury are established. Assessing proximity involves asking whether the parties are in a “close and direct” relationship that it would be “just and fair having regard to that relationship to impose a duty of care in law.” (*Cooper v. Hobart*, 2001 SCC 79, at paras. 32 and 34 and *Deloitte*, at para. 25). Proximity would arise in a relationship where the following criteria is met: (1) the defendant ought reasonably to foresee that the plaintiff will rely on his or her representation; and (2) the reliance is reasonable in the circumstances (*Hercules Managements Ltd. v. Ernst & Young*, [1997] S.C.J. No. 51 (S.C.C.) at para. 24).

[48] When assessing proximity, if a relationship falls within a previously established category, or is analogous to one, then the first stage of the *Anns/Cooper* framework is complete, and a duty of care may be identified. In these situations, the second stage of the *Anns/Cooper* framework will seldom be engaged as any residual policy considerations will have already been taken into account (*Deloitte*, at para. 26). If a previously defined relationship, or analogous one, is not identified in the first step, the second step is required.

[49] Therefore, it is not necessary to conduct the full *Anns/Cooper* analysis if a previous case has already established that the duty of care in question (or an analogous duty) exists (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27; *Deloitte*

& *Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63; *Rankin (Rankin's Garage & Sales) v. J.J.*, 2018 SCC 19).

[50] For cases of pure economic loss arising from negligent misrepresentation or performance, the proximity analysis requires viewing the defendant's undertaking and the plaintiff's reliance. Thus, where the defendant undertakes to provide a representation or service in circumstances that invite the plaintiff's reasonable reliance, the defendant becomes obligated to take reasonable care. However, this duty is not limitless, and a duty that falls outside the purpose for which the presentation was made, or service was undertaken, will fall outside of the scope of the proximate relationship. It limits liability on the basis that the defendant cannot be liable for a risk against which it did not undertake to protect (*Deloitte*, at paras. 30-31).

[51] Ultimately, the Halls have the burden of showing there was a duty of care owed to them by establishing some form of special relationship between themselves and Scotia.

[52] Before delving into the crux of the duty of care analysis, I will start with the disagreement between the parties in *how* the Plaintiffs are establishing their right. The Defendants position is that this right is being asserted by the Plaintiffs as prospective estate beneficiaries. The Plaintiffs oppose this position, stating they assert their right as individuals.

[53] The Plaintiffs did not articulate, in my view, how commencing an action as "individuals" against "Scotia's creation, management and representations around named beneficiaries Gordon Hall's LIF account" is any different from bringing an action against Scotia as the beneficiaries. They do not deny they are the beneficiaries at issue. In fact, it is quite the opposite – the primary damages they seek is for the loss of their collective share of the LIF as per the beneficiary designations.

[54] In what other capacity could the Plaintiffs be establishing a category (whether previously recognized or new), other than as the estate beneficiaries/LIF beneficiaries? The plaintiffs are silent as to any alternatives other than "individuals". I do not see "individuals" as describing a way that would amount to a bank having a duty of care towards them. If I were to assume the Halls have presented a duty of care between themselves as individuals and Scotia as the bank, then following this logic one would have to accept the bank has a duty of care to any individual. This reasoning is certainly flawed as Scotia cannot have a duty of care to every individual in existence.

[55] Alternative to either the “beneficiaries” or “individuals” designations, the Plaintiffs may be articulating there is *general* duty of care of Scotia in their creation, management, and representations around named beneficiaries of the LIF account. In other words, Scotia simply owes a duty of care regarding this LIF, without necessarily articulating who the duty of care is owed to. I do not agree with this interpretation and will cite the Alberta Court of Queens Bench decision of *Tymkow v. Rusnak*, [1992] A.J. No. 1055 (Alta. Master) to explain why:

[39] it would not be sufficient to just plead that there was a duty. What the duty is must be pleaded, and since duties are positive not negative a plaintiff cannot just say that there was a duty not to do what was done. That would be a circular argument.

[40] One cannot decide if what was not done was a breach of a duty by measuring what was not done against what was not done. That would be logically ludicrous. The negative (what was not done) must be measure against the positive (the duty).

[56] Ultimately, it is illogical for the Plaintiffs to say they litigate this action against Scotia around named beneficiaries of Gordon Hall’s LIF account, but then, conversely, state they themselves have not filed this suit as said estate beneficiaries. I cannot see any other close and direct relationship that may potentially arise between the parties regarding Mr. Gordon Hall’s LIF account (as administered by Scotia) outside of the Plaintiffs being the LIF’s beneficiaries.

[57] Therefore, I see the special relationship as being one between estate beneficiaries/LIF beneficiaries and the bank.

[58] There appears to be no previous decisions in this Province which have assessed whether a duty of care exists between a bank and their client’s children/estate beneficiaries. Alberta courts have found no *prima facie* duty of care arises between this type of relationship. This has been determined in the following two cases: *MacDonald v. Taubner*, 2010 ABQB 60 and *Tymkow v. Rusnak*, [1992] A.J. No. 1055 (Alta. Master).

[59] In *MacDonald v. Taubner*, 2010 ABQB 60, an issue raised during estate litigation was whether a beneficiary of an estate had a direct cause of action against a person alleged to have done wrong to the effect of diminishing their share. The Court, citing *Longmuir v. Holland*, 2000 BCCA 538, stated:

[167] [The Defendant] cites *Longmuir v. Holland* 2000 BCCA 538 (B.C.C.A.), as authority for the proposition that any claim relating to the transaction between Robert and Paul, whether as to the validity of the transaction, the circumstances of

the transaction or the righteousness of the transaction, belongs to Paul, and not to the beneficiaries of his estate. There, the British Columbia Court of Appeal noted: “It is trite law that only the personal representative has status to set aside an act done by his testator or intestate.” (At para. 44). Since Paul was unable to deal with his own affairs, any cause of action was vested in his attorney under the Enduring Power of Attorney, Eric, and then in Eric as executor of his Estate. Because Eric was involved in the transactions and had no interest in advancing a claim against Robert, any claim against Robert should likely have been brought by an administrator *ad litem*.

[...]

[169] Robert also cites *Tymkow v. Rusnak*, [1992] A.J. No. 1055 (Alta. Master) at page 7; *Rotvold v. Rotvold Estate*, [1991] B.C.J. No. 3656 (B.C. S.C.) at page 5; *Glazer v. Glugowski*, [1976] A.J. No. 149 (Alta. Dist. Ct.) at page 18; and *Joncas v. Pennock*, [1959] A.J. No. 48 (Alta. C.A.) at paras. 12 and 14. All confirm that a beneficiary has no direct cause of action for relief, absent being appointed administrator for that purpose.

[60] The case of *Tymkow* was commenced by a plaintiff who was the son of a client of the bank. The action dealt with, in part, the plaintiff’s concerns regarding his sister’s handling of their mother’s finances before and after she died. He commenced a claim for damages, alleging his sister had intermeddled and manipulated their mother’s bank accounts to her benefit which had caused him a monetary loss. As against the bank, he alleged the bank wrongfully allowed the daughter to access bank records and accounts related to their mother, negligently allowed the daughter to wrongfully and fraudulently transfer and dispose of assets in breach of trust, and failed to adequately supervise the daughter and allow her to manipulate accounts. The relationship between the mother and the bank was one of creditor-debtor. The Court found there was no special relationship between the bank’s client’s son and the bank, stating:

[52] the relationship between the bank and the mother was a contractual relationship. A claim in debt is a common law action. At common law the only persons who can have a cause of action on a contract are the parties to it.

[53] The son, not being a party to any contract between the bank and the mother, cannot have a cause of action against the bank.

[54] The plaintiff cannot have a cause of action against the bank based on the debtor-creditor relationship between the bank and the mother. The fact that he is a son of the mother and that he would be a beneficiary of his mother’s estate when she died is not relevant. Those do not give him a cause of action *in his own right*...

[55] When the mother died the bank’s legal position did not change. It was still a debtor for whatever was properly owing to the mother. The only change was that

there would be a legal representative for the mother's estate who could properly demand and accept payment from the bank of whatever it properly owed to the mother. The bank would not have to deal with the legal representative of the mother's estate simply because the mother was dead.

[56] The bank's fundamental legal position did not change. Neither did the plaintiff's. He did not have a legal position before the mother died and does not have one after she died unless he is the legal representative of the estate. He does not have a cause of action in his own right.

[61] I would therefore agree that the Plaintiffs, in their own capacity, cannot claim against Scotia for negligence and misrepresentation. The duty of care owed is between Scotia and Mr. Gordon Hall, and following his death, his Estate. Any action could be started by his Estate through its Administrator. The Plaintiffs, either as estate beneficiaries/LIF beneficiaries, do not have a special relationship which arises to the level of a legal duty of care being owed to them by Scotia. This conclusion is supported by other Canadian cases where no legal duty was found for this type of relationship.

[62] Seeing there is no *prima facie* duty of care between the parties, I do not need to move to the second part of the *Anns/Cooper* framework which requires the review of any residual policy considerations that may negate a duty of care.

[63] A potential concern of finding a duty of care between estate beneficiaries/LIF beneficiaries and Scotia would be that banks might be exposed to "liability in an indeterminate amount for an indeterminate time to an indeterminate class". (*Hercules*, at para. 31). However, *Cooper* has stated this observation is made during the first step of the *Anns* test, not the second. It is therefore not necessary to resort to the second step of *Anns*, being any residual policy considerations, when highlighting this concern of potential indeterminate liability (*Deloitte*, at para. 167 citing J. Blom, "Do We Really Need the *Anns* Test for Duty of Care in Negligence? (2016), 53 *Alta. L. Rev.* 895, at pp. 906 and 908).

[64] Therefore, for the reasons discussed, I conclude that the losses at issue have not been shown to fall within the scope of Scotia's duty of care. There is no *prima facie* duty of care established between the Halls as estate beneficiaries/LIF beneficiaries/individuals.

BREACH OF FIDUCIARY DUTY

[65] A fiduciary relationship is a form of "special relationship" recognized in common law jurisdictions. A fiduciary is a person who has agreed, or who has

undertaken, to act for or on behalf of, or in the interest of, another person in respect of the exercise of a power or discretion which will affect the interest of that other person in a legal or practice sense (Halsbury's Laws of Canada (online), *Restitution*, "The Context of Restitutionary Relief: Fiduciary Duty" at HRE-77).

[66] A fiduciary duty is defined in Black's Law Dictionary, 7th Ed., page 523, in these words:

A duty of utmost good faith, trust, confidence, and candor owed by a fiduciary (such as a lawyer or corporate officer) to the beneficiary (such as a lawyer's client or a shareholder); a duty to act with the highest degree of honesty and loyalty toward another person and in the best interest of the other person (such as the duty that one partner owes to another).

[67] The legal concept and principles underlying the motion of fiduciary duties was discussed in the SCC decision of *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377 (SCC):

[30] This conceptual approach to fiduciary duties was given analytical structure in the dissenting reasons of Wilson J. in *Frame v. Smith*, [1987] 2 S.C.R. 99 at 136, who there proposed a three-step analysis to guide the courts in identifying new fiduciary relationships. She stated that relationships in which a fiduciary obligation has been imposed are marked by the following three characteristics: (1) scope for the exercise of some discretion or power; (2) that power or discretion can be exercised unilaterally so as to affect the beneficiary's legal or practical interests; and, (3) a peculiar vulnerability to the exercise of that discretion or power. Although the majority held on the facts that there was no fiduciary obligation, Wilson J.'s mode of analysis has been followed as a "rough and ready guide" in identifying new categories of fiduciary relationships; see *LAC Minerals*, supra, per Sopinka J., at p. 599, and per La Forest J., at p.646; *Canson*, supra, at p. 543; *M.(K.) v. M.(H.)*, supra, at pp. 63-64. Wilson J.'s guidelines constitute indicia that help recognize a fiduciary relationship rather than ingredients that define it.

[31] In *LAC Minerals I* elaborated further on the approach proposed by Wilson J. in *Frame v. Smith*. I there identified three uses of the term fiduciary, only two of which I thought were truly fiduciary. The first is in describing certain relationships that have as their essence discretion, influence over interests, and an inherent vulnerability. In these types of relationships, there is a rebuttable presumption, arising out of the inherent purpose of the relationship, that one party has a duty to act in the best interests of the other party. Two obvious examples of this type of fiduciary relationship are trustee-beneficiary and agent-principal. In seeking to determine whether new classes of relationships are per se fiduciary, Wilson J.'s three-step analysis is a useful guide.

[32] As I noted in *LAC Minerals*, however, the three-step analysis proposed by Wilson J. encounters difficulties in identifying relationships described by a slightly different use of the term "fiduciary", viz., situations in which fiduciary obligations, though not innate to a given relationship, arise as a matter of fact out of the specific circumstances of that particular relationship; see *supra*, at p. 648. In these cases, the question to ask is whether, given all the surrounding circumstances, one party could reasonably have expected that the other party would act in the former's best interests with respect to the subject matter at issue. Discretion, influence, vulnerability and trust were mentioned as non-exhaustive examples of evidential factors to be considered in making this determination.

[33] Thus, outside the established categories, what is required is evidence of a mutual understanding that one party has relinquished its own self-interest and agreed to act solely on behalf of the other party. This idea was well-stated in the American case of *Dolton v. Capitol Federal Savings & Loan Assn.*, 642 P. 2d 21 (Colo. Ct. App., 1982), at pp. 23-24, in the banker-customer context, to be a state of affairs:

...which impels or induces one party "to relax the care and vigilance it would and should have ordinarily exercised in dealing with a stranger." ... [and] ... has been found to exist where there is a repose of trust by the customer along with an acceptance or invitation of such trust on the part of the lending institution.

[68] It was further expanded on by the Supreme Court of Canada in *Elder Advocates of Alberta Society v. Alberta*, 2011 SCC 24:

[36] In summary, for an ad hoc fiduciary duty to arise, the claimant must show, in addition to the vulnerability arising from the relationship as described by Wilson J. in *Frame*; (1) an undertaking by the alleged fiduciary to act in the best interest of the alleged beneficiary or beneficiaries; (2) a defined person or class of persons vulnerable to a fiduciary's control (the beneficiary or beneficiaries); and (3) a legal or substantial practical interest of the beneficiary or beneficiaries that stands to be adversely affected by the alleged fiduciary's exercise of discretion or control.

[69] The Plaintiffs allege in their Amended Statement of Claim that Scotia breached fiduciary duties purportedly "owed by trustees in the management of registered accounts".

[70] Applying both the three general characteristics as proposed by Wilson J. in *Frame* and further expanded upon in *Elder Advocates of Alberta Society*, I do not see there being a fiduciary relationship amounting to a duty between the Halls and Scotia.

[71] As stated in *Elder Advocates of Alberta Society*, citing *Perez v. Galambos*, 2009 SCC 48 [2009] 3 S.C.R. 247 (SCC), an undertaking would be when the

fiduciary, either expressly or impliedly, undertook to act in accordance with the *duty of loyalty reposed on him or her*. Further, as discussed in the case of *Hodgkinson*, the Supreme Court of Canada found the trial judge applied the correct legal test in finding that the parties' relationship had all of the characteristics of one that is fiduciary, as the appellant relied on the respondent's recommendations in deciding to make the investment, *and the respondent was aware of this reliance* (at para. 56).

[72] Further, as found in *PIPSC v. Canada (Attorney General)*, 2012 SCC 71:

[122] most recently, in *Elder Advocates*, McLachlin C.J. stated that the aforementioned characteristics were useful but did not provide a complete code. This Court adopted the *Hodgkinson* factors **but added the requirement of an undertaking by the alleged fiduciary to act in the best interest of the alleged beneficiary or beneficiaries.**

[emphasis added].

[73] I will note “beneficiary” or “beneficiaries” is used within these cases but are not synonymous with the estate beneficiary in this case. Beneficiary in these decisions is a word encompassing those parties who are relying on the fiduciary, or those who state there is some obligation to them in the dynamic. As stated in Halsbury's Law of Canada (online) *Trusts: Definition of trust and related concepts*” (1.2) at HTR-2. “a trust may be considered a relationship which arises when the legal and beneficial ownership of a property is divided. One party in the relationship, the trustee, holds legal title and is obliged to maintain the property for another's benefit (the beneficiary”).

[74] Viewing the relationship between the Halls and Scotia, I do not find any undertaking or duty of loyalty Scotia would have to the sons. Elements imposing a fiduciary relationship, including trust, confidence, reliance, skill, knowledge, and advice are absent between the Plaintiffs and Defendants. They are present between Mr. Gordon Hall and the Defendants. I do not see this loyalty to Mr. Gordon Hall, and now his Estate, as extending to the Halls.

[75] Based on the requirement as added by the Supreme Court of Canada in *Elder Advocates*, there was never an undertaking by the bank to act in the best interest of the Halls. In this scenario a duty to their client could not extend beyond to a duty to those who are proposed to inherit from their client's account.

[76] Discretion exercised by Scotia in administering this LIF would be governed by legislation and instructions provided by the account holder/legally authorized

representative. Even if the facts as pled are true, including the Plaintiffs' reliance on statements made by Ms. Dunphy's legal counsel or testimony from a Scotia representative during Probate proceedings, this is not met with a reciprocal undertaking by the bank to act in the best interest of the Halls. The Plaintiffs' financial needs would be separate from their client's financial needs *and may actually conflict* with their own statutory, contractual, and fiduciary obligations to their client Mr. Gordon Hall.

[77] For this reason, I do not find the existence of a fiduciary relationship is present between Scotia and the Halls.

[78] In conclusion, I believe it would do more harm to greatly expand a bank's duty of care owed to third parties such as in this case. Canadian court have historically been reluctant to recognize a duty of care extending beyond the traditional bank-customer relationship (Jacob Kulgsberg & Alice Min, "The Evolving Duty of care: Constructive Knowledge and Third-Party Liability in Banking" (2025) 56 Adv Q 124-125). While there are certainly cases where a duty of care has been recognized between banks and third parties, such as in ones involving actual knowledge of fraudulent activity, the situation in this motion does not arise to such a special level of relationship (Geoff R. Hall, "Something Borrowed: A Sensible Definition of a Bank's Duty of care in Tort to Non-Customers" (2012) 27:3 BFLR 1) .

THE NATIONAL INSTRUMENTS

[79] Lastly, the Plaintiffs claimed in their Amended Statement of Claim that Scotia was in breach of NI 31-103, specifically sections 13.2, 13.201 and 13.3. The Plaintiffs depend on this claim of breach to argue that this gives rise for a cause of action against Scotia.

[80] The National Instruments are a set of standardized rules adopted by security regulators across the country in order to create consistency in securities regulation across various jurisdictions. While the Plaintiffs assert that Scotia contravened statutory duties imposed by National Instrument 31-103, the National Instrument does not create a tort.

[81] The Plaintiffs clarified within their brief that they did not plead National Instrument 31-103 as a cause of action. I therefore find this alleged cause of action a moot point.

RULE 13.03(4) – REQUEST FOR ADJOURNMENT TO AMEND

[82] The Plaintiffs submit the Court may adjourn the motion, impose terms, or give directions under Rule 13.03(4). They state dismissal at this stage would risk procedural unfairness and unnecessary multiplicity of proceedings. This point is made as allegedly there is a pending application that was scheduled for March 2026 respecting the administration of Mr. Gordon Hall's estate. Depending on the result of this separate proceeding and the relief granted, it could alter the Plaintiff's legal capacity and style of cause. This proceeding was commenced prior to the Defendants' motion and raises issue that intersect with the standing arguments on this motion.

[83] Civil Procedure Rule 13.03(4) reads:

- (4) A judge who hears a motion for summary judgment on pleadings may adjourn the motion until after the judge hears a motion for an amendment to the pleadings.

[84] This Rule allows the Court to adjourn a motion to allow a party to make amendments to the pleadings. It does not involve what may be granted in a separate court proceeding.

[85] Any amendment to the substance of the pleadings will not change the irreconcilable issue – being the lack of ability to obtain the relief sought from Scotia. The action is not sustainable as against Scotia due to an absence of special relationship between the parties. An amendment cannot change this inevitable outcome. Again, the Plaintiffs have been adamant they are not interested in seeking relief from the estate, administered by Ms. Dunphy. The issue here is *who* they are trying to sue, not what for. If the Plaintiffs choose to commence a proceeding against the estate, or Ms. Dunphy, this summary judgment motion will not affect that interest.

[86] Lastly, to be clear, my decision to grant this summary judgment motion has no bearing on the Estate's interests. This decision does not extinguish the Estate's ability to seek relief, if it chooses to do so. It is strictly related to the Hall siblings, who commenced this action as individuals in their own right, not on behalf of the Estate.

CONCLUSION

[87] Whether the allegations as pled are true, I simply find there is no special relationship between the parties and thus the action is doomed to fail.

[88] If there was an issue in how the LIF was handled, advice given, or information dispensed, the duty would be owed by Scotia to Mr. Gordon Hall, and now his Estate. If there is a disagreement now or in the future on how the LIF is handled by Ms. Dunphy, or the Estate, this would be an action between the Halls and their father's Estate, or Ms. Dunphy.

[89] I make these observations only to say there may be alternative ways to proceed in a separate action against different parties for the relief sought. I cannot, nor am I, commenting on the merits of any future speculated claims. I simply acknowledge that the claim before me is unsustainable and certain to fail due to a lack of special relationship between the Defendants, being the financial institution Scotia, and the Plaintiffs who filed it, namely the bank's client's children/beneficiaries.

[90] The motion for summary judgment on the pleadings is allowed and the claims by the Plaintiffs against the Defendants are dismissed.

[91] The parties have not made submissions on costs. I encourage the parties to try to agree, and if not, I ask that further written submissions be made within 30 calendar days from the date of release of this decision.

Glen G. McDougall, J.