

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
Bertrand Bouchard	)	Sydney Davis, for the Applicant
	)	
Applicant	)	
	)	
– and –	)	
	)	
2748204 Ontario Inc o/a Flex Home Loans,	)	Solomon Ross Fischhoff, for the respondents
Michael Yosher, and Rakesh Gupta	)	Flex Home Loans and Michael Yosher.
	)	
Respondents	)	Rakesh Gupta, self-represented
	)	
	)	
	)	
	)	HEARD: April 10, 2026

REASONS FOR DECISION - RULE 21 MOTION ON APPLICATION

JUSTICE S. ANTONIANI

[1] Bertrand Bouchard brings an application seeking to have the parcel register/abstract Index for his home property rectified to discharge and delete a charge against his property at 86 Kensington Avenue North, in Hamilton, Ontario. Mr. Bouchard alleges the charge was fraudulently registered by the respondents Flex Home Loans and Michael Yosher and later transferred to the respondent Rakesh Gupta.

[2] 2748204 Ontario Inc. o/a Flex Home Loans and Michael Yosher bring this motion under Rule 21 to dismiss the within application against them, and, if necessary, an order permitting them to deliver affidavit evidence.

[3] The moving parties argue that the Notice of Application does not disclose a cause of action against them and should be struck, because neither of them has any current interest in the property in issue. They also submit that any dispute against them is statute barred by the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B.

[4] The moving parties bring their motion to strike the Notice of Application/dismiss the application pursuant to Rules 14.09, 21.01(1)(a), 21.01(1)(b), 37, 38, and 39 of *the Rules of Civil Procedure*, and s. 4 of the *Limitations Act, 2002*...

Issues:

[5] Does Rule 21.01(1)(a) apply to proceedings commenced by way of a Notice of Application?

[6] If Rule 21.01(1)(a) does apply, can the question of the appropriate limitation period as against the respondents Flex Home Loans and Michael Yosher be determined by a motion under this rule?

[7] Does Rule 21.01(1)(b) apply to proceedings commenced by way of a Notice of Application?

[8] If Rule 21.01(1)(b) applies, does the within Notice of Application disclose any cause of action as against the respondents Flex Home Loans and Michael Yosher?

Decision:

[9] Rule 21.01(1)(a) does not apply to proceedings commenced by way of application and this aspect of the motion is dismissed. In any event, the issue as to the applicable limitation period is one of mixed law and fact and could not be determined by motion even if the rule applied.

[10] Rule 21.01(1)(b) can apply to proceedings commenced by way of application. The joint operation of Rules 21.01(1)(b) and 14.09 permits consideration of whether the present Notice of Application should be struck for failing to disclose any cause of action against the moving parties.

[11] The Notice of Application discloses a cause of action for civil fraud against 2748204 Ontario Inc o/a Flex Home Loans and Michael Yosher, and this aspect of the motion is dismissed.

Discussion:

Application of Rule 21

[12] The parties disagree as to whether this motion is properly brought under Rule 21 where the originating process is a Notice of Application. On behalf of Mr. Bouchard, counsel argues that Rule 21 applies only to actions. Applications are governed by a separate set of rules and processes than are actions.

[13] The moving party respondents argue that courts have recognized that Rule 21 may be used in respect of applications. They ask for relief under each of Rule 21.01(1)(a) and (b).

[14] Under Rule 21.01(1)(a), the moving parties argue that the application is barred by the *Limitations Act*. The moving parties argue that the limitations issue is a question of law, and not fact, and that the rule, which refers to actions, may also apply in the context of applications.

[15] Under Rule 21.01(1)(b), the moving parties argue that the application should be struck out, as disclosing no cause of action against them.

[16] The *Rules of Civil Procedure* contain separate and distinct provisions for actions as for applications. There are numerous substantive differences in the processes. In several instances, provision is made that a specified rule intended to apply to actions may also apply to applications, with necessary modifications. Outside of these instances, the two manners of proceeding are kept entirely separate.

[17] Rule 1.04(1) provides that: “These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.” And Rule 1.04 (2) provides “Where matters are not provided for in these rules, the practice shall be determined by analogy to them.”

[18] Under Rule 21.01 (1), a party may move before a judge,

(a) for the determination, before trial, of a question of law raised by a pleading in an action where the determination of the question may dispose of all or part of the action, substantially shorten the trial or result in a substantial saving of costs; or

(b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence, and the judge may make an order or grant judgment accordingly.

(2) No evidence is admissible on a motion,

(a) under clause (1) (a), except with leave of a judge or on consent of the parties;

(b) under clause (1) (b)

[19] Rule 14.09 indicates that “an originating process that is not a pleading may be struck out or amended in the same manner as a pleading.” [Emphasis added.]

[20] A consideration of other definitions provided for under the *Rules* is useful: an “action” is a proceeding that is not an application. An originating process is defined to include each of an action and an application.

[21] A Notice of Application is an originating process that is not a pleading. Pleadings are governed primarily by Rule 25, which relates to actions.

[22] Can a motion be brought under Rule 21 in the present proceeding? The Court of Appeal for Ontario has made clear statements as to motions brought under each of Rules 21.01(1)(a) and (b), in the context of applications.

[23] I will address first whether this motion is properly brought pursuant to rule 21.01(1)(b) to strike out the Notice of Application for disclosing no cause of action in relation to the moving parties.

[24] In *Tanudjaja v. Attorney General (Canada) (Application)*, 2013 ONSC 5410, aff’d 2014 ONCA 852, 123 O.R. (3d) 161, at para. 5, in considering a motion brought pursuant to a proceeding initiated by way of notice of application, the court made the following statement:

“The motions are brought pursuant to rule 14.09 and rule 21.01(1)(b) of the *Rules of Civil Procedure*. Under the latter, a pleading may be struck if it fails to disclose a reasonable cause of action. The former allows such a motion to be brought in respect to applications.” [Emphasis added.]

[25] The Court’s statement is clear, and I note that it was addressing the same relief as the moving parties seek here – striking for no cause of action. Rule 14.09 specifically allows for an originating process that is not a pleading to be struck out in the same way as a pleading.

[26] Mr. Bouchard’s Notice of Application is an originating process that is not a pleading. I find that the motion to strike is properly brought pursuant to rule 21.01(1)(b).

[27] In determining whether a cause of action is disclosed, I have considered that pursuant to Rule 21.01(2)(b), evidence is not admissible on a motion to strike. I have therefore considered only the originating process, the Notice of Application, and not the affidavit evidence that accompanied it.

[28] It follows that affidavit evidence from the moving parties would also be inadmissible and will not be required or permitted.

Cause of action in relation to the moving parties

[29] The moving parties agreed that, for the purpose of determining the issues in this motion, I may accept all facts alleged by the applicant as true. The Notice of Application relies upon the following grounds:

a) On or about October 26, 2020, Mr. Bouchard was approached by two unknown people who arrived at his home unsolicited. The two conducted an inspection and advised him that certain work needed to be completed. One of the two people appeared to be a salesperson, and Mr. Bouchard understood the other person to be a representative of Flex Home Loans.

- b) While the two people were at the house, one of them made a telephone call to an unknown person. They handed the phone to Mr. Bouchard and asked him to repeat a statement. Mr. Bouchard is not able to recall what the statement was.
- c) After the inspection, Mr. Bouchard was advised that certain work was required to be done. Mr. Bouchard does not recall whether he signed any documents but indicates that no document was explained to him, and that he did not have an opportunity to read anything or to obtain independent legal advice. No copies of documents were provided to Mr. Bouchard at that time or any time thereafter.
- d) Mr. Bouchard did not request work to be done on his property, and he did not request any financing from Flex Home Loans.
- e) Following the unsolicited visit, monthly withdrawals of \$9.99 were made from Mr. Bouchard's bank account in favour of Flex Home Loans. In March 2022, the withdrawals increased to \$399.99. After Mr. Bouchard realized that the withdrawals were in the larger amount, he sought legal advice and arranged a stop payment.
- f) Mr. Bouchard became aware that a charge had been registered against his property in favour of Flex Home Loans on October 26, 2020, in the amount of \$30,999.85. That was the same date that the two people attended at his home.
- g) About two months after the charge was registered, on December 18, 2020, the charge had been transferred from Flex Home Loans to Rakesh Gupta.
- h) On July 21, 2025, Mr. Bouchard received a Notice of Sale from Rakesh Gupta. The Notice of Sale indicated that \$80,711.29 was required to bring the mortgage into good standing by August 25, 2025, failing which Mr. Bouchard's property would be sold pursuant to a power of sale.
- i) Following receipt of the Notice of Sale, the within application was brought.

[30] There are limited conclusions that may be drawn as to the nature of the relationship between the two parties. There is a paucity of information and no documentation available which may disclose the legal basis upon which Flex Home Loans acted to register a charge against Mr. Bouchard's home or collect monthly payments from Mr. Bouchard thereafter.

[31] Mr. Bouchard seeks orders declaring that any loan agreements he entered into with any respondent should be declared *void ab initio if such an agreement exists*. He also seeks an order cancelling any agreement *if such an agreement exists*, an order discharging and deleting the charge registered against his property, and an order directing that the Parcel register/Abstract Index be rectified to reflect the deletion.

[32] Among the grounds for the application, Mr. Bouchard alleges that if he did in fact sign any documents authorizing the charge against his property, that was based on fraudulent representations made by the individuals who approached him at his home.

[33] The charge was registered in favour of Flex Home Loans' corporate name, 2748204 Ontario Inc.

[34] The allegation of civil fraud in the Notice of Application is squarely against Flex Home Loans. Mr. Yosher, as the principal of Flex Home Loans, may be held personally liable, if it were found that he actively and knowingly participated in a fraud perpetrated by the corporation.

[35] If the charge against Mr. Bouchard's property was registered through fraud, then Flex Home Loans had no lawful interest to sell to Mr. Gupta.

[36] I conclude that the application discloses a cause of action of civil fraud against each of the moving parties.

Rule 21.01(1)(a)

[37] I turn now to a consideration of whether the motion is properly brought under rule 21.01(1)(a) for a determination of the *Limitations Act* issue. In *McLeod v. Castlepoint Development Corporation*, (1997), 31 O.R. (3d) 737, Moldaver J.A. (as he then was) stated:

“Rule 21.01(1)(a) refers to pleadings in an action. It has nothing to do with applications instituted under Rule 14”.

[38] This statement is unambiguous. Rule 21.01(1)(a) refers to pleadings in an action. It does not refer to applications, and there is no other rule which allows that it may be used in the context of an application. Rule 14.09 does not apply because the issue under (1)(a) is a determination of a question of law within an action. It is not as to the “striking out or amending” of a pleading, as allowed for via Rule 14.09.

[39] In any event, in the present case, I find that a determination of the *Limitations Act* issue is both a question of law and fact, such that it could not be determined by a rule 21.01(1)(a) motion, even if the rule applied.

[40] In making the argument that the *Limitations Act* issue is strictly a question of law and not fact, the moving parties framed the relationship between the corporate defendant and Mr. Bouchard as a contract for the provision of services. Their factum states “the Applicant received some or all the aforesaid goods and services”. The moving parties assert that the facts are undisputed such that the only issue to be resolved is the question of law as to which is the applicable limitation period. I disagree with this assertion.

[41] At this stage in the proceedings, the nature and terms of the relationship between Mr. Bouchard and the moving parties is almost entirely unknown. The Notice of Application indicates that there are no documents whatsoever in the possession of the applicant. There is no evidence as to whether and with whom there was an agreement for provision of services. There is nothing upon which the court might discern what specific rights the corporate moving party claimed when it registered a charge on Mr. Bouchard’s property. There is no agreement for provision of services produced, either with the Flex Home Loans representative, or with the other unknown person.

[42] Mr. Bouchard contends that the 10 year limitation period under the *Real Property Limitations Act* R.S.O. 1990, c. L.15 applies, as he argues that the relief he seeks is to recover his

property. In the alternative he argues that he has brought this application within 2 years of having understood that a legal proceeding would be an appropriate means to remedy the situation.

[43] The grounds further indicate that Flex Home Loans and Mr. Yosher are subject to proceedings by the Financial Services Regulatory Authority of Ontario (the “FSRA”). The FSRA alleges that Flex Home Loans has been carrying on business as a mortgage lender in Ontario without a license and has included false or misleading information in renewal applications, all contrary to the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006 c. 29.

[44] On Mr. Bouchard’s behalf, counsel argues that even if the *Limitations Act* applies, the application is not out of time, as Mr. Bouchard only became aware that it would be necessary to commence the present application in July 2025 when he received the Notice of Sale from Mr. Gupta. Further, it only became publicly disclosed in July 2025 that Flex Home Loans may not have been licensed for mortgage lending, which disclosure allowed Mr. Bouchard to consider whether he might be the victim of a broader scheme of mortgage related misconduct. This information might impact the discoverability analysis.

[45] The aspect of the within motion brought pursuant to Rule 21.01(1)(a), which asks that I determine the issue as to which limitation period applies to Mr. Bouchard’s application is dismissed as being improperly brought in the context of an application, and because it would in any event require findings of fact and law.

Orders:

[46] The cause of action of civil fraud is disclosed in the Notice of Application against these moving parties, and the rule 21.01(1)(b) motion is dismissed.

[47] The aspect of this motion which relies on rule 21.01(1)(a) – the limitations question – is dismissed as improperly brought in the context of an application.

[48] The parties are bound by a timetable dated December 2, 2025. The timetable begins upon the distribution of these reasons.

Costs:

[49] I would urge the parties to agree on costs. If the parties are unable to come to an agreement, then cost submissions may be made as follows:

- a. Within 15 calendar days of the distribution of these reasons to counsel, the applicant/responding party shall serve and file his bill of costs, along with any written costs submissions, not exceeding three pages, double-spaced;
- b. Within 25 calendar days of the distribution of these reasons, the moving parties shall serve and file any responding costs submissions of no more than three pages, double-spaced, together with a draft bill of costs;
- c. The applicant/respondent's reply submissions, if any, are to be served and filed within 30 calendar days of the distribution of these reasons, and are not to exceed two pages;
- d. If no submissions are received from either party within the timeline allocated, that party shall be deemed to have no submissions; and
- e. If no submissions are received from either party, the parties will be deemed to have resolved the issue of the costs, and costs will not be determined by me.

Justice Antoniani

Released: July 17, 2026

CITATION: Bouchard v. 2748204 Ontario Inc. O/A Flex Home Loans et al., 2026 ONSC 4183
COURT FILE NO.: CV-25-91608
DATE: 2026-07-17

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Bertrand Bouchard

Applicantt

– and –

2748204 Ontario Inc. o/a Flex Home Loans, Michael
Yosher and Rakesh Gupta

Respondentst

REASONS FOR DECISION

Antoniani J.

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