

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Oldcastle Building Products Canada Inc. v.
Division 8 Consulting Corp.*,
2026 BCCA 223

Date: 20260522
Docket: CA50585

Between:

**Oldcastle Building Products Canada Inc.
dba Oldcastle Building Envelope**

Appellant
(Defendant)

And

Division 8 Consulting Corp.

Respondent
(Third Party)

Before: The Honourable Justice Winteringham
The Honourable Justice Fleming
The Honourable Justice Edelmann

On appeal from: An order of the Supreme Court of British Columbia, dated
March 5, 2025 (*The Owners, Strata Plan EPS 677 v. ASPAC Developments Ltd*,
2025 BCSC 694, Vancouver Docket S178251).

Counsel for the Appellant:

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Place and Date of Hearing:

Vancouver, British Columbia
December 12, 2025

Place and Date of Judgment:

Vancouver, British Columbia
May 22, 2026

Written Reasons by:

The Honourable Justice Fleming

Concurred in by:

The Honourable Justice Winteringham
The Honourable Justice Edelmann

Summary:

This is an appeal from an order setting aside the appellant's third-party notice that claimed contribution and indemnity as against the respondent on the basis that the claim was time-barred by the Limitation Act. The appellant challenges the chambers judge's interpretation of "to commence a court proceeding" in s. 22(2) of the Act as requiring the filing of a third-party notice to commence a third-party claim for contribution or indemnity.

Held: Appeal dismissed. The judge's conclusion that filing a third-party notice, not a notice of application, commences a third-party claim for contribution or indemnity and therefore stops the running of the limitation period under s. 22(2), rests on a correct interpretation.

Reasons for Judgment of the Honourable Justice Fleming:

[1] The appellant, Oldcastle Building Products Canada Inc., appeals from an order setting aside its third-party notice against the respondent, Division 8 Consulting Corp. The underlying action involves allegations of deficiencies and defects in the construction of a building and claims of negligence and breach of contract against a multitude of defendants including Oldcastle. Division 8 was a subcontractor retained for engineering and design work that the plaintiffs allege was deficient and attributable to Oldcastle. In the third-party notice, Oldcastle claimed contribution and indemnity.

[2] The chambers judge set aside the third-party notice because it was filed after the expiry of the limitation period. She rejected Oldcastle's argument that filing an application for leave to file the third-party notice attaching the proposed notice stops the running of the limitation period.

[3] Oldcastle makes the same argument on appeal and asserts the judge erred by misinterpreting the meaning of the phrase "to commence a court proceeding" in s. 22(2) of the *Limitation Act*, S.B.C. 2012, c. 13.

[4] Agreeing with the judge's statutory interpretation, I would dismiss the appeal for the reasons that follow.

Limitation Act

[5] The *Limitation Act* changed the approach from the former *Act*, so that time runs from the date a party discovers a claim, as opposed to the date of accrual of a cause of action.

[6] There is no dispute that pursuant to ss. 6(1), 16 and 22(2) of the *Limitation Act*, the basic two-year limitation period applies to Oldcastle's third-party claim for contribution or indemnity, and the time began to run on August 14, 2018, when Oldcastle was served with the plaintiff's notice of civil claim.

[7] The basic limitation period of two years is set out in s. 6(1): “subject to this Act, a court proceeding in respect of a claim must not be commenced more than 2 years after the day on which the claim is discovered”.

[8] Section 16 provides a specific discovery rule for contribution or indemnity claims:

Discovery rule for claims for contribution or indemnity

- 16** A claim for contribution or indemnity is discovered on the later of the following:
- (a) the day on which the claimant for contribution or indemnity is served with a pleading in respect of a claim on which the claim for contribution or indemnity is based;
 - (b) the first day on which the claimant knew or reasonably ought to have known that a claim for contribution or indemnity may be made.

[9] Under s. 22(1)(b), a third-party proceeding regarding a “related claim” may be brought despite the expiry of the limitation period, if the court proceeding regarding the claim it relates to was commenced in time. However, s. 22(2) removes the right “to commence a court proceeding” under subsection 22(1)(b), after the limitation period for the related claim has expired, if the claim is for contribution or indemnity.

[10] Found in s. 1, relevant definitions include limitation period: “in relation to a claim, means the period after which a court proceeding must not be brought with respect to the claim”; and claim: “a claim to remedy an injury, loss or damage that occurred as a result of an act or omission”. The term court proceeding is not defined.

Procedural History

[11] Served with the notice of civil claim on August 14, 2018, Oldcastle filed its response to civil claim on July 20, 2020, and the first of two applications for leave to file a third-party notice against Division 8 and several others on July 23, 2020.

[12] The application with respect to Division 8 was dismissed with liberty to apply again on a revised proposed third-party notice.

[13] In British Columbia, limitation periods were suspended for one year between March 26, 2020 and March 25, 2021, due to the Covid-19 pandemic.

[14] Oldcastle's second application was filed on March 2, 2021, but not heard until September 9, 2021. Prior to the hearing, Division 8 asserted the limitation period for filing a third-party notice would expire on August 12, 2021.

[15] The parties signed a tolling agreement that extended the limitation period to the earliest of: (1) the date of the hearing; or (2) September 30, 2021. The application was granted on September 16, 2021. The parties disagreed about the form of order. Division 8 proposed how they might resolve the impasse on November 16, 2021, but Oldcastle did not respond.

[16] Division 8 wrote to Oldcastle on June 28, 2022, indicating no third-party notice had been filed and the limitation period had expired. On July 15, 2022, Oldcastle advised Division 8 that a third-party notice was filed against it on June 14, 2022.

[17] Division 8 applied to strike or set aside the third-party notice on the basis that the limitation period had expired. Oldcastle took the position that the third-party notice was not statute barred because the notice of application for leave to file a third-party notice was filed within the limitation period on March 2, 2021.

Chambers Decision

[18] The judge identified the issue as when a third-party claim for contribution or indemnity is considered to be commenced, thereby stopping the limitation period from running. She began her analysis with the relevant provisions of the *Limitation Act*, highlighting the use of "court proceeding" in ss. 1, 6(1) and 22, along with "must not be commenced" in s. 6(1), and "to commence a court proceeding" in s. 22(2) respecting claims for contribution and indemnity.

[19] Oldcastle relied heavily on *Sumas Remediation Services Inc. v. Crowe MacKay LLP* (21 February 2020) Vancouver S169817 (B.C.S.C. in Chambers) [*Sumas*] in support of its position that filing an application for leave to file a third-party notice stops the running of the limitation period under s. 22(2). *Sumas* identified *Sohal v. Lezama*, 2019 BCSC 1709 [*Sohal SC*], as authority for that conclusion, although as the judge noted, the limitation period in *Sohal SC* had expired before the leave application was brought. After *Sumas* was decided, *Sohal SC* was upheld on appeal: 2021 BCCA 40 [*Sohal CA*] (collectively [*Sohal*]). With respect to s. 22(2), *Sohal* established third-party proceedings for contribution and indemnity cannot be brought after the applicable limitation period has expired.

[20] In declining to follow *Sumas*, the judge determined it could not be reconciled with the later guidance provided by *Sohal CA* and *Neale Engineering Ltd. v. Ross Land Mushroom Farm Ltd.*, 2023 BCCA 429 [*Neale*].

[21] The interpretive issues regarding s. 22(2) in *Sohal* were two-fold: whether s. 22(2) allows for any discretion to grant leave to file if the limitation period had expired; and did it apply to claims for contribution or indemnity brought by way of third-party notice, as opposed to a separate action. The argument on the second issue, that a third-party claim is not a court proceeding, was rejected. Writing for this Court, Justice Grauer opined that “court proceeding” encompasses originating processes, and a third-party claim is a proceeding that originates a claim. He also indicated a court proceeding, as an originating process, includes a third-party notice, given a third-party notice falls within the definition of an originating pleading as a document that “starts a proceeding” in R. 1-1 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*]: at paras. 93–94.

[22] Based on *Sohal CA*, the judge reasoned:

[39] The phrase “court proceeding” was also addressed by the Court of Appeal in *Sohal*, *supra* at para. 93, where the Court of Appeal confirms that a court proceeding refers to an **originating process**, which includes a third-party claim. The Court of Appeal noted that this is consistent with Rule 1-1 of the Rules, which includes a third-party claim as a document that starts a court proceeding.

[40] To reiterate, a third-party notice as a third-party claim is a form of originating process and included in the phrase "court proceeding" in s. 6(1) of the *Limitation Act*. Notably, however, by definition, a court proceeding would **not** include a notice of application as it is not a document that commences a court proceeding. A notice of application is not a form of originating process. The effect of s. 22(2) is to prohibit a third-party claim for contribution to proceed after the expiry of the limitation period.

[Emphasis in original.]

[23] *Neale* considered *Sohal SC* and s. 16 of the *Limitation Act*. Writing for a five-member division, Justice Willcock concluded the *Limitation Act* was intended to remedy the long postponement of claims for contribution and indemnity and multiple trials that could result under the former *Act*. As the judge noted, in interpreting s. 16, he identified the intent and purpose of the discovery provision as requiring defendants to address potential claims for contribution early in the litigation: at para. 57. This means they must make an early determination of potential third-parties who may be responsible for the plaintiff's loss and initiate proceedings within the limitation period to preserve any right to contribution or indemnity.

[24] In rejecting Oldcastle's position, the judge found it ignored the words "court proceeding" and what it means to "commence" a court proceeding under s. 22(2). She also reasoned there would be no need to file a third-party notice if its position were accepted, contrary to the purposes of ss. 16 and 22(2), if not rendering them meaningless: at para. 43.

[25] The judge concluded that to pursue Division 8 for a claim in indemnity and contribution, Oldcastle was required to commence a court proceeding within the two-year limitation period (plus the effect of the Covid-19 suspension and the tolling agreement), by filing a third-party notice rather than an application for leave to file.

On Appeal

Standard of Review

[26] The parties agree the challenge to the judge's interpretation of s. 22(2) raises a question of law reviewable for correctness.

Analysis

[27] Oldcastle raises a number of grounds in asserting the judge erred in her interpretation of s. 22(2). Three capture the scope of their submissions. First and most significantly, Oldcastle submits the judge analyzed “to commence a court proceeding” too narrowly. Second, it says the judge’s interpretation is inconsistent with the case law (without suggesting she overlooked any applicable authority). Under the third ground, Oldcastle argues the judge’s interpretation creates uncertainty and a risk of unfairness or undesirable results.

1. The judge analyzed “to commence a court proceeding” too narrowly

[28] This ground asks whether the judge’s interpretation of “to commence a court proceeding” in s. 22(2) as requiring the filing of a third-party notice to commence a third-party claim for indemnity or contribution was incorrect. The answer turns on the guidance provided by the authorities she considered and ultimately the modern principle of statutory interpretation.

[29] The modern principle requires the words of an enactment to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme and object of the Act and the intention of Parliament: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837. As Justice Horsman helpfully explained in *Wang v. British Columbia (Securities Commission)*, 2023 BCCA 101 interpreting the meaning of the words requires the court in every case:

[41] ... to undertake the contextual and purposive approach mandated by the modern rule, and thereafter determine whether there is ambiguity in the wording of a statute. There is a genuine ambiguity only where the words of a provision are capable of more than one meaning when read in light of the entire context of a provision, which includes the statutory purpose [citation omitted].

[30] Referring to *Sohal CA*, Oldcastle observes that “court proceeding” has been interpreted as referring to an “originating process”, which includes a third-party claim. But again, *Sohal CA* also identified a third-party notice as an originating

pleading that commences a court proceeding constituted by a third-party claim.

Justice Grauer's analysis includes:

[93] ... A third party claim is a proceeding brought in court that originates a claim: here, the claim for contribution. Accordingly, consistent with the definition of "originating pleading" in Rule 1-1 of the *Supreme Court Civil Rules*, which includes a third party notice as a "document ... that starts a proceeding", a third party claim would constitute a "court proceeding". This fits with section 6 of the new Act.

[94] In para 24 of *Mayer*, I expressed the view that "court proceeding" was intended to encompass originating processes. For the reasons just discussed, that would include a third party notice In fact a counterclaim *would* qualify as an originating proceeding, for the same reason that a third party notice does. Both are processes that originate proceedings for claims not previously raised.

[Underline added, italicize in original.]

[31] Although Oldcastle acknowledges the *Rules* provide important context for the interpretation of s. 22(2), it does not address the other aspect of R. 1-1 that is relevant in interpreting the meaning of "to commence a court proceeding". As the judge highlighted, a notice of application, unlike a third-party notice, is not defined as an "originating pleading", and therefore is not a form of originating process that commences a third party claim or, encompassed by "court proceeding".

[32] Oldcastle confines its analysis of the *Rules* to R. 3-5(3) and (4). Rule 3-5(4) permits the filing of a third-party notice as of right within 42 days of being served with the notice of civil claim or counterclaim; and at any time, with leave of the court. Oldcastle asserts that subrule (4) provides two options to "commence" or start a third-party claim, although R. 3-5 does not use that language. Instead, it speaks of how a party may "pursue" a third-party claim. Further, nothing in R. 3-5 would suggest its provisions override the definitions in R. 1-1, which are stipulated as expressly applying throughout the *Rules* unless "the context otherwise requires".

[33] In contending it was an error for the judge not to construe "to commence a court proceeding" as encompassing the filing of an application for leave to file a third-party notice, Oldcastle fails then to address the import of the interpretive analysis in *Sohal CA* and urges a reading of the words based on an incomplete and

inaccurate contextual interpretation. Nor does Oldcastle's interpretation account for the delay that could result and in fact did occur in this case, in filing the third-party notice after leave is granted, contrary to *Neale* and the requirement under s. 16 for defendants to address potential claims for contribution early in the litigation.

[34] By contrast, in my view, the judge interpreted the words "to commence a court proceeding" in s. 22(2) correctly. Ultimately, she arrived at an interpretation that indicates the words bear only one reasonable meaning with respect to a third-party claim for contribution or indemnity, applying the guidance from *Sohal CA* and *Neale*, and the contextual and purposive approach mandated by the modern principle. Her contextual analysis considered the use of the words in s. 22(2), the component words throughout the *Limitation Act*, the definitions of relevant terms, the particularly impactful definitions in R. 1-1 and the exclusion of notice of application from a key definition. In fulfilling the purposive approach, the judge attended to the need to give meaning to ss. 16 and 22(2) more broadly, per *Sohal CA* and *Neale*. Her conclusion that commencing a third-party claim requires the filing of a third-party notice accords with their intent and purpose, namely that defendants must address potential claims for contribution early in the litigation. The judge recognized this same intention is reflected in s. 22(2)'s absolute bar on commencing third-party claims for indemnity or contribution once the limitation period (applicable to such claims) has expired.

2. The judge's interpretation is inconsistent with the case law

[35] It follows from my analysis thus far that I see no merit in this ground. I will deal with it in an effort to offer some clarity.

[36] Oldcastle asserts the limitation analysis in *Sohal CA*, *Neale*, *Sumas* and other Supreme Court decisions is based on the filing date for application for leave to file a third-party notice, not the notice itself. Oldcastle seems to acknowledge the issue was not addressed directly in *Sohal CA* or *Neale*.

[37] Nor was it decided in *Sohal SC*.

[38] With respect to *Sumas*, Oldcastle emphasizes its reliance on the decision of Justice Kent in *Sohal SC* as establishing a defendant is only required to file a leave application within the two-year limitation period. At para. 36 in *Sumas*, for example, the court refers to para. 27 in *Sohal SC*: “I consider the issue to be settled law ... Justice Kent identified the relevant point in time not being the point when the judicially-sanctioned third-party notice is filed ... but rather when the defendant files the application for leave ...”

[39] Respectfully, para. 27 does not articulate a legal proposition. Instead, Kent J. noted the defendants had conceded the limitation period for bringing their third-party claims expired before their leave applications were filed. As a result, the related issue was narrowed to whether there was any discretion under s. 22 to “grant leave to bring a third-party claim for contribution and indemnity” after the limitation period expires: *Sohal SC* at para. 27. Justice Kent went on to observe, just as Grauer J.A. later did in *Sohal CA*, that a third-party notice is a form of originating process and originating pleading. He also described the third-party notice as the pleading by which the “proposed contribution claim is, quite literally, being originated”: at paras. 66–68; see also para. 90. To the extent Oldcastle emphasizes Kent J.’s use of “proposed”, I agree with Division 8 that read contextually, it is of no moment. Again, the document in *Sohal* was a notice of application attaching a third-party notice, the limitation period had already expired, and the relevant argument was that a third-party claim was not a court proceeding within the meaning of s. 22. *How* a court proceeding involving a third-party claim for indemnity or contribution is commenced or, what step needs to be taken to do so under s. 22(2), was not disputed in *Sohal*.

[40] As a result, *Sohal* is not authority for the proposition that filing a notice of application for leave to file a third-party notice commences a court proceeding in the form of a third-party claim for contribution or indemnity, under s. 22(2). Instead, the statutory interpretation in *Sohal CA* offers clear guidance on how to interpret the meaning of the words “to commence a court proceeding” with respect to such a claim.

[41] To the extent Oldcastle relies on references in *Neale* as endorsing its interpretation that an application for leave to file a third-party notice may commence a third-party claim, it also misreads that decision.

3. The judge's interpretation creates uncertainty and undesirable or unfair results

[42] Oldcastle suggests that using only the date of filing the third-party notice creates uncertainty and the risk of delay that could result in missing the limitation period. Noting the one step litigants have complete control over is filing a notice of application, Oldcastle emphasizes that hearings can be adjourned due to limited court resources or at the behest of an opposing party, and there are often delays in scheduling a hearing date for applications that are too long to be heard in regular chambers. Delay also arises from reserved decisions.

[43] Regarding the delay concern, Oldcastle also suggests the judge's interpretation incentivizes mischief on the part of proposed third parties, who could delay a hearing by "insisting on lengthy chambers" or delay entry of an order granting leave to file by objecting to the form of order.

[44] Oldcastle's concerns are fully met, however, by the other practical realities that Division 8 points to. A defendant wishing to preserve the limitation period for a third-party claim, after the 42-day deadline for filing a third-party notice as of right, always has the option of filing a notice of civil claim seeking contribution or indemnity. The option of filing a separate action is contemplated by the case law (e.g., see *Sohal CA* at para. 79). A multiplicity of proceedings is avoided by discontinuing the separate action, if and when leave to file a third-party notice is granted and the notice is filed in time, or by consenting to an order that the two actions be heard together. Oldcastle did not challenge Division 8's submission that filing a separate action is common practice, particularly since the *Limitation Act* came into force in 2013, as are consent orders that the two actions be heard together.

Alternative Ground/New Issue

[45] Oldcastle argues in the alternative and very briefly that the hearing of an application for leave to file a third-party notice (or pronouncement of the order granting leave) is the relevant date for the limitation analysis, on the basis that the remaining steps after that date are merely procedural.

[46] Although Division 8 takes the position the alternative argument raises a new issue on appeal that should not be considered, it is more efficient to dispose of the argument summarily. Based on my analysis of the judge's interpretation of s. 22(2), and conclusion she correctly decided the filing of the third-party notice starts the commencement of the third-party claim for indemnity and contribution, the alternative argument cannot succeed.

Conclusion

[47] In summary, I conclude the judge's decision that filing a third-party notice, not a notice of application, commences a third-party claim for contribution or indemnity and therefore stops the running of the limitation period under s. 22(2), rests on a correct interpretation.

Disposition

[48] I would dismiss the appeal.

“The Honourable Justice Fleming”

I AGREE:

“The Honourable Justice Winteringham”

I AGREE:

“The Honourable Justice Edelman”