

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tervita Corporation v. Troyer Ventures Ltd.*,
2026 BCSC 1261

Date: 20260708
Docket: S157985
Registry: Vancouver

Between:

Tervita Corporation

Plaintiff

And

**Troyer Ventures Ltd., Spectra Energy Midstream Corporation, Gerry Robertson
and Leland Charron**

Defendants

And

**Spectra Energy Midstream Corporation, Troyer Ventures Ltd., Gerry
Robertson, and Leland Charron**

Third Parties

Before: The Honourable Justice Hamilton

Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.
June 24, 2026

Place and Date of Judgment:

Vancouver, B.C.
July 8, 2026

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Overview

[1] The defendants apply to dismiss the Notice of Civil Claim (NOCC), which includes claims related to an explosion of waste materials at the plaintiff's facilities. The defendants submit that the plaintiff's claims are statute-barred because the action was commenced more than two years after the claims were discovered, contrary to section 6(1) of the *Limitation Act*, S.B.C. 2012, c. 13.

[2] The plaintiff concedes that it commenced the action more than two years after discovering the claims but disagrees that the claims are statute-barred. The plaintiff argues that the claims were preserved because it started an identical action against the defendants in Alberta before the two-year time limit expired. The Alberta action was never served on the defendants and was later dismissed. Nevertheless, the plaintiff submits that its commencement of the Alberta action met the requirement in section 6(1) of the *Limitation Act* to commence a "court proceeding" within two years.

[3] The defendants argue that the plaintiff's interpretation of s. 6(1) is incorrect, contrary to the objectives of the *Limitation Act* and inconsistent with other legislation such as the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 [CJPTA] that applies when transferring proceeding between provinces.

[4] The issue before me is whether the plaintiff's commencement of a court proceeding in Alberta within the limitation period saves the late-filed NOCC from being statute-barred.

[5] For the reasons that follow, I do not accept the plaintiff's interpretation of s. 6(1). Therefore, the plaintiff's claims are statute-barred and dismissed.

Factual Background

[6] The facts are not controversial. Most of the facts are taken from the examination for discovery evidence of the plaintiff's representative Robin Course.

[7] The plaintiff Tervita Corporation ("Tervita") operates a waste disposal facility near Fort St. John, British Columbia.

[8] The defendant, Spectra Energy Midstream Corporation (“Spectra”) operates a gas plant near Fort St. John.

[9] The defendant Troyer Ventures Ltd. (“Troyer”) provides transportation services, including to Spectra.

[10] The defendants Gerry Robertson and Leland Charron are employed by Troyer.

[11] The defendants Troyer, Gerry Robertson and Leland Charron are together referred to as the “Troyer Defendants”.

[12] The NOCC arises from an explosion and fire that occurred on September 10, 2013, at Tervita’s Fort. St. John waste disposal facility.

[13] On the morning of September 10, 2013, Troyer transported waste materials from Spectra’s gas plant to Tervita’s facilities for disposal. Troyer’s employees Robertson and Charron transported and unloaded the waste material.

[14] Prior to Troyer transporting Spectra’s waste materials, Spectra was required, for safety reasons, to prepare a manifest that listed the contents of the waste materials and to specify whether or not the contents were flammable.

[15] Spectra incorrectly identified the waste materials in the manifest, describing them as relatively non-flammable materials when they were actually flammable.

[16] Relying on the manifest, the Troyer Defendants unloaded the materials at Tervita’s facilities in the open air, as opposed to through a pipe. Had the manifest been accurate and stated that the waste materials were flammable, they would have unloaded the materials using a pipe, not in the open air.

[17] Because the flammable materials were unloaded in the open air, they vaporized, causing an explosion and a fire at Tervita’s facilities.

[18] Between September 11 and 13, 2013, Tervita, the RCMP, Transportation Canada and WorkSafe BC each investigated to determine the cause of the explosion.

[19] By September 20, 2013 at the latest, Tervita had knew that (1) the waste materials were flammable; (2) Spectra's manifest was inaccurate; (3) had the Troyer Defendants or Tervita known the materials were flammable, they would have been unloaded using a pipe; and (4) the materials would not have exploded if they were unloaded properly with a pipe.

[20] Tervita acknowledges that it discovered the claims against all of the defendants by no later than September 20, 2013.

The BC Action

[21] The NOCC was filed September 25, 2015, but not served on Spectra until September 6, 2016.

[22] Spectra's counsel contacted Tervita's counsel on September 7, 2016, to ask for an extension to file its response to the NOCC. Counsel agreed to a series of extensions to January 16, 2017.

[23] Spectra filed its response on January 16, 2017, and pled the limitation defence.

[24] The NOCC was also served on Troyer on September 6, 2016. The NOCC was served on the personal Troyer Defendants on or about September 19, 2016.

[25] The Troyer Defendants' counsel wrote to Tervita's counsel on September 20, 2016, to ask for an extension to file their response to the NOCC and raised the limitation issue.

[26] At a case management conference, the parties were directed to deal with the limitation issue as a preliminary issue. Thus, no trial date was set on the substantive issues.

[27] To date, only Tervita's representative has been examined for discovery.

Alberta Action

[28] Tervita started a virtually identical action to the NOCC in the Alberta Court of Queen's Bench (now King's Bench) on September 8, 2015. The Alberta Action made the same claims against the same defendants. The Alberta Action was commenced within two years of the incident.

[29] However, Tervita did not serve the Alberta Action on any of the defendants.

[30] On September 2, 2016, Tervita applied to the Alberta Court of Queen's Bench to extend the time to serve the Alberta Action and was granted a three-month extension to serve the defendants by December 8, 2016.

[31] For reasons not explained, Tervita still did not serve the Alberta action on the defendants.

[32] On January 17, 2024, more than seven years after the expiry of its three-month extension to serve, Tervita made another application to the Alberta Court to extend the time to serve the Alberta Action.

[33] On August 28, 2024, the Alberta Court dismissed Tervita's application, effectively dismissing the Alberta Action.

The Applications Currently Before the Court

[34] Spectra applies to dismiss the claims made against it in the NOCC pursuant to Rule 9-7 of the Supreme Court civil summary trial Rule.

[35] During oral submissions, the Troyer Defendants' counsel confirmed that the Troyer Defendants, like Spectra, rely on Rule 9-7. In the alternative, the Troyer Defendants seek relief pursuant to Rule 9-6.

Suitability of A Summary Trial

[36] The defendants submit that a summary trial on the limitation issue is suitable. Tervita takes no position on the suitability of a summary trial.

[37] I find that a summary trial is suitable for four reasons:

(1) I am able to find the facts necessary to decide the issue. As mentioned above, the facts are uncontroverted.

(2) A conventional trial would be significantly more costly for the parties.

(3) A conventional trial is unnecessary to determine the limitation issue.

(4) It is not unjust to decide the issue based by a summary trial.

[38] In *Ross v. Insurance Corporation of British Columbia*, 2021 BCSC 1659, the Court found that a summary trial was suitable for determining a limitation issue, stating:

[27] The sole issue to be decided is whether the claim is statute-barred. The issue is distinct from any of the potential issues of liability and damages that could arise at trial. The facts are not significantly in dispute here. If decided in the defendants' favour, the litigation comes to an end. If decided in the plaintiff's favour, the trial would proceed. I am satisfied that I am able, on the whole of the evidence before me, to find the facts necessary to decide the issues of fact and law on this issue in this forum.

[39] The circumstances of the case at hand are similar, and therefore, as in *Ross*, I find that a summary trial is suitable.

[40] I will now turn to address the substantive issue of whether Tervita's claims against the defendants should be dismissed based on the limitation defence.

Limitation Defence

[41] As mentioned above, the issue is whether Tervita met the requirements of the *Limitation Act* by commencing a materially identical Alberta Action within two years

of the incident and then filing and serving the BC NOCC while the Alberta Action was still extant.

[42] Section 6 (1) of the *Limitation Act* sets out the basic limitation period to file a court proceeding:

Basic limitation period

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.

[43] The incident occurred on September 10, 2013. As a result of the various investigations between September 10 and 13, 2013, the claims were discovered by Tervita by September 20, 2013, at the latest.

[44] The Alberta Action was filed on September 8, 2015, but never served.

[45] The NOCC herein was filed on September 25, 2015, more than two years after the claims were discovered.

[46] Tervita submits that the BC NOCC meets the requirements of the *Limitation Act* because the filing of an originating process in Alberta relating to the same claims preserves or “stops the clock” on the limitation period such that the later filed BC NOCC is not barred by the *Limitation Act*.

[47] Tervita notes that the phrase “court proceeding” is not defined in the *Limitation Act* and notably does not confine “court proceeding” to a court proceeding commenced in BC. Tervita argues that the court proceeding in Alberta for the same relief should be considered together with the BC NOCC for the purpose of assessing whether a court proceeding has been commenced on time. Tervita argues that its timely filing of the Alberta Action fulfills the policy objectives of limitation law in treating the defendants fairly by giving them timely notice of the claim.

[48] I will address each of Tervita’s arguments.

[49] First, Tervita argues that Tervita’s filing of the Alberta Action preserved or stopped the running of the limitation period such that the later filed BC NOCC is not barred by the *Limitation Act*.

[50] Tervita acknowledges that there is no caselaw directly on point. However, Tervita invites the Court to draw an analogy based on: (1) commentary in case law where parallel proceedings and limitation periods are discussed; and (2) the *CJPTA* as an example of legislation which deals with limitation periods when there are parallel proceedings in different provinces. I will first address the commentary in case law before turning to the *CJPTA*.

[51] Tervita argues that commentary in caselaw makes it clear that filing an originating pleading preserves a limitation period such that other pleadings filed later (including different actions but relating to the same claim) are not limitation-barred. In support of this proposition, Tervita relies heavily on the Court of Appeal’s decision in *Oldcastle Building Products Canada Inc v. Division 8 Consulting Corp.*, 2026 BCCA 223 (*Oldcastle*) and my decision as chambers judge in the same case: *The Owners, Strata Plan EPS 677 v. ASPAC Developments Ltd.*, 2025 BCSC 694.

[52] *Oldcastle* did not involve court proceedings in different provinces. Both the facts and the legal issue were different than the case at hand. In that *Oldcastle*, a defendant had filed a notice of application seeking leave to file a third-party notice within the two-year limitation period but had not filed the actual third-party notice until after the limitation period expired.

[53] The issue before the Court in *Oldcastle* was whether the filing of a notice of application seeking leave qualified as commencing a “court proceeding” for the purposes of s. 6(1) of the *Limitation Act*. I found that it did not because commencing a “court proceeding” required filing an originating process such as a third-party notice (not merely a notice of application). The Court of Appeal upheld the decision.

[54] While *Oldcastle* addressed a different factual and legal issue, Tervita argues that the case is analogous. Tervita highlights para. 44 of the Court of Appeal's decision *Oldcastle* in which Fleming, J.A. states:

... 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 (eg. see *Sohal CA* [*Sohal v. Lazema*, 2021 BCCA 40] 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.

[55] Tervita argues that the above statement supports its argument that the filing of an originating process preserves the limitation period for subsequent parallel proceedings filed after the limitation period. I disagree.

[56] In paragraph 44 of *Oldcastle*, the Court of Appeal confirms that if a defendant in an action wishes to file a third-party claim after the 42-day deadline and is faced with a fast-approaching limitation period, they can file a separate notice of civil claim against the intended third party *before* the limitation period has passed. The discussion in *Oldcastle* (and other cases Tervita relies on) specifically focusses on what can be done to meet the limitation period *before* it expires.

[57] In paragraph 44 of *Oldcastle*, the Court of Appeal discusses how to avoid multiple proceedings, and explains, "*if and when leave to file a third-party notice is granted and the notice is filed on time*" [my emphasis added], the separate NOCC can be discontinued. The Court of Appeal mentions that the other way to avoid multiple proceedings is for parties to consent to the second, separate action being heard at the same time as the original action (i.e. this option is available when the second, separate action was filed within the limitation period but the third-party notice could not be filed in time in the first action).

[58] *Oldcastle* and the other cases Tervita relies on do not state that commencing the original action prior to the limitation period preserves a subsequent third-party notice (or other originating process) that was separately filed after the limitation period expired.

[59] Tervita also raises the *CJPTA* as an example of the way the court considers limitation issues in parallel proceedings. Specifically, Tervita submits that when a claimant commences an action in BC and an identical action in another jurisdiction, where one of the actions is potentially statute-barred, the court has recognized its role to ensure “that justice is done between the parties.” For example, the BC court may stay a BC action on the condition that the stay may be vacated if the foreign court rules that the parallel foreign action is limitation-barred: see, for example *Pan-Afric Holdings Ltd. v. Ernst & Young LLP*, 2007 BCSC 685 at paras. 59 to 63.

[60] Several provinces have adopted uniform legislation in respect of transfers of proceedings. BC has done so by way of the *CJPTA*. Section 23 of the BC *CJPTA* states as follows:

Limitations and time periods

23 (1) In a proceeding transferred to the Supreme Court from a court outside British Columbia, and despite any enactment imposing a limitation period, the Supreme Court must not hold a claim barred because of a limitation period if the claim would not be barred under the limitation rule that would be applied by the transferring court, and at the time the transfer took effect, the transferring court had both territorial and subject matter competence in the proceeding.

(2) After a transfer of a proceeding to the Supreme Court takes effect, the Supreme Court must treat a procedure commenced on a certain date in a proceeding in the transferring court as if the procedure had been commenced in the Supreme Court on the same date.

[61] If Tervita successfully applied under the *CJPTA* to transfer the Alberta Action to BC, Tervita could have pursued the Alberta Action in BC and there would be no limitation issue. However, Tervita did not apply to transfer the Alberta Action to BC. Tervita provided no explanation for why it did not apply to transfer the Alberta Action.

[62] However, if Tervita had applied pursuant to the *CJPTA* to transfer the Alberta Action to BC, it would have been required under s. 23(1)(b) of the *CJPTA* to demonstrate that at the time of the transfer, the Alberta Court had both territorial and subject matter competence in the proceeding, as defined in the *CJPTA*. It is unclear whether Tervita could have met this statutory hurdle. Tervita did not serve the Alberta Action. Further, the incident took place in BC and all the parties conduct business in BC.

[63] In my view, Tervita cannot take advantage of section 23(2) the *CJPTA* without having made an application to transfer the Alberta Action to BC and addressing the statutory requirements under s. 23(1) of the *CJPTA*.

[64] I will now turn to Tervita's argument that the phrase "commencing a court proceeding" in s. 6(1) of the *Limitation Act* includes commencing a court proceeding in Alberta.

Is the Alberta Action a "Court Proceeding" under the *Limitation Act*?

[65] Tervita submits that "court proceeding" is not defined in the *Limitation Act* to be restricted to a court proceeding in British Columbia. Therefore, Tervita argues that the phrase must be intended to be interpreted broadly to include court proceedings commenced out of province.

[66] Tervita says that, therefore, the Alberta Action constitutes a "court proceeding" within the meaning of s. 6(1) of the *Limitation Act*, satisfying the requirement that a court proceeding be commenced within the required two years, even though Tervita ultimately pursued the British Columbia NOCC.

[67] The defendants agree that the phrase "court proceeding" in the *Limitation Act* is not restricted to a proceeding filed in a BC court. However, the defendants state that this does not assist Tervita's position on the facts of this case.

[68] The defendants state that there is good reason why the BC *Limitation Act* does not refer only to BC court proceedings. For example, when a tort occurs in BC

but an action is validly brought in another jurisdiction, the substantive law of BC (i.e. the *lex loci delicti*) applies to the action in the other jurisdiction, including the BC limitations legislation: *Tolofson v. Jensen*, [1994] 3 S.C.R. 1022.

[69] Spectra's counsel offered an example of a motor vehicle accident that occurred in BC but where the plaintiff, defendant and witnesses reside in Ontario such that the action is brought in Ontario (assuming no party establishes that Ontario is *forum non convenience*). In this example, the substantive law of BC, including the BC *Limitation Act*, would apply to the claim because the motor vehicle accident occurred in BC. In such a case, the phrase “court proceeding” in section 6 of the BC *Limitation Act* would refer to the Ontario court proceeding.

[70] In other words, the BC *Limitation Act* contemplates the fact that other provinces (and jurisdictions outside Canada) may, in some cases, be required to apply BC limitations law to determine whether the court proceeding in the foreign jurisdiction has been brought within the BC limitation period. Therefore, the defendants agree that the words “court proceeding” in s. 6(1) of the BC *Limitation Act* is not limited to BC court proceedings.

[71] However, the defendants submit there is no support in law for the proposition that an action commenced within the limitation period outside of BC is the relevant “court proceeding” under section 6(1) where a subsequent, separate action has been brought in BC and the question is whether that latter action is statute-barred. I agree.

[72] Tervita's suggestion would be inconsistent with the law regarding transfer of proceedings in which courts have recognized that absent a transfer, commencement of a new action in a different jurisdiction after the relevant limitation period has expired results in the action being statute-barred: see for example, *Canadian Pacific Railway Company v Hatch Corporation*, 2019 ABQB 392 at para. 6; *McCooeye v Hankook Tire Canada Corp.*, 2020 ABQB 496 at paras. 7 and 18.

Tervita's Argument that the Alberta Action fulfilled the Core Objectives of Limitation Law

[73] Tervita argues that the Alberta action fulfilled the core objectives of limitation law and that dismissal of the BC NOCC would run contrary to these objectives, which is to strike a balance between preserving the interests of defendants and treating plaintiffs fairly and ensuring that matters are decided on their merits.

[74] The Supreme Court of Canada in *Canadian Imperial Bank of Commerce v. Green*, 2015 SCC 60 at para. 57 confirmed that limitation periods serve three purposes:

- (1) to promote accuracy and certainty in the adjudication of claims;
- (2) to provide fairness to persons who might be required to defend against claims based on stale evidence;
- (3) to prompt persons who might wish to commence claims to be diligent in pursuing them in a timely fashion.

[75] I disagree with Tervita that granting the defendants' applications to dismiss the BC NOCC would run contrary to the purposes of limitation laws.

[76] Tervita commenced the Alberta Action just prior to the limitation period expiring and then chose not to serve the defendants within the required year. Then, despite obtaining a three-month extension for service to December 8, 2016, more than three years after the incident, Tervita chose not to serve the defendants with the Alberta Action. Further, Tervita waited until 2024 to apply for additional time to serve the defendants with the Alberta Action. Not surprisingly, the Alberta Court of King's Bench dismissed Tervita's application at that point, effectively dismissing the Alberta Action. Regardless of the fact that Tervita filed the Alberta Action, it did not serve it on any of the defendants, providing formal notice of the claims within the limitation period applicable in British Columbia.

[77] Tervita did not ever apply to transfer the Alberta Action to BC. Instead, Tervita chose to start a new action in British Columbia on September 25, 2015, over two years after the claims were discovered.

[78] In Tervita's Response to the defendants' applications, it suggests that the defendants were somehow to blame for its late filing of the BC NOCC. Tervita claims that had it known prior to the expiry of the time for service of the Alberta Action on December 8, 2016, that the defendants intended to plead limitation defences in British Columbia, it would have served the Alberta Action on the defendants by December 8, 2016. I reject Tervita's arguments that the defendants are to blame.

[79] There is no evidence from Tervita that the fact that the defendants had not yet served their responses to civil claim by the expiry of the deadline for service in Alberta had anything to do with their failure to serve the Alberta Action. In fact, the evidence is to the contrary.

[80] The Troyer Defendants were served with the BC NOCC between September 6 and September 19, 2016. On September 20, 2016, the Troyer Defendants' counsel sent Tervita's counsel a letter specifically raising the limitation defence. Thus, by September 20, 2016, Tervita's counsel was aware that at least three of the defendants intended to rely on the limitation defence. Yet, despite this, Tervita (1) chose not to serve any of the defendants with the Alberta Action by December 8, 2016 or later; (2) made no application to try to transfer the Alberta Action to BC.

[81] I do not see how it is unfair to Tervita to dismiss the NOCC. Tervita has not been diligent in pursuing its claims. Tervita filed two actions, but served neither of them prior to the expiry of the limitation period applicable in British Columbia.

Conclusion

[82] I am satisfied that the claims against Spectra and the Troyer Defendants in the NOCC are statute-barred because the NOCC was not filed within two years of the claims being discovered.

[83] I find that the claims were not preserved by Tervita having filed the Alberta Action within the two years. Had Tervita intended to pursue the Alberta Action that was filed on time, they should have served the Alberta Action on the defendants as required by the Alberta courts. Had Tervita wished to pursue litigation in the British Columbia courts, Tervita should have filed its NOCC by September 20, 2015, at the latest, perhaps earlier or made an application to transfer the Alberta Action to BC. It is unknown whether a transfer application would have been successful. However, absent a successful transfer application, which would have included showing that the Alberta court had territorial and subject matter competence over the matters, Tervita cannot avail itself of the benefit of s. 23(2) of the *CJPTA*.

[84] The applications of Spectra and of the Troyer Defendants to dismiss all claims made against them in Tervita's NOCC are granted.

Costs

[85] Counsel did not specifically address costs. If the parties are unable to agree as to costs, counsel are at liberty within the next 30 days to request a brief appearance through scheduling at 9:15 am via Teams.

"Hamilton J."