# Court of King's Bench of Alberta

**Citation: Peace Wapiti School Division No. 76 v 1510526 Alberta Ltd, 2024 ABKB 673**

**Date:** 20241115
**Docket:** 2304 00237
**Registry:** Grande Prairie



Between:

**Peace Wapiti School Division No. 76 also known as Peace Wapiti School Division**

Plaintiff

- and -

**1510526 Alberta Ltd., operating as Magnum Electric, 3M Canada Company - Compagnie 3M Canada, operating as 3M Canada, Graham Construction and Engineering Inc. and ABC Corporation**

Defendants

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**Memorandum of Decision**
**of the**
**Honourable Applications Judge M. R. Park**

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## Introduction:

[1] The Plaintiff, Peace Wapiti School Division No. 76, also known as Peace Wapiti School Division ("**Peace Wapiti**") applies for an order allowing it to amend its Amended Statement of Claim filed on April 20, 2023 to add the Respondent, Flint Corp. ("**Flint**"), as a party to this action. Alternatively, Peace Wapiti seeks to substitute Flint as a defendant in the place of the defendant ABC Corporation.

## Background:

[2] Peace Wapiti is a public-school authority which is responsible for public education in the city of Grande Prairie.

[3] Peace Wapiti owns real property within Grande Prairie's municipal limits, on which the Whispering Ridge Community School is located. That school consists of a primary building, along with nine modular units, commonly known as "portables".

[4] Peace Wapiti engaged the defendant Graham Construction and Engineering Inc. ("**Graham**") to place and "install" the portables on the Whispering Ridge school premises. That work was completed by the end of 2018.

[5] Each portable has two rainwater downspouts, which are equipped with heat trace tape, which Peace Wapiti says was manufactured by the defendant 3M Canada Company - Compagnie 3M Canada, operating as 3M Canada ("**3M**"). Basically, this tape functions to keep any water that might be in the downspouts from freezing. Power to the heat tape is distributed through electrical breaker boxes.

[6] Graham subcontracted the electrical scope of its work, including the installation of the heat trace tape and the breaker boxes, to the defendant 1510526 Alberta Ltd., operating as Magnum Electric ("**Magnum**"). Magnum completed its scope of work by the end of October, 2018.

[7] On April 11, 2021, a fire broke out at the school, which resulted in damage to several of the portables, as well as to the main school building.

[8] A fire investigation report was completed on April 11, 2021 (the "**Fire Report**") and provided to Peace Wapiti within days of completion. The author of the report concludes that: "The cause of the fire is due to malfunction of the heat trace on the pvc pipe". A copy of the Fire Report was before the Court when this application was heard.

[9] After receiving the Fire Report, an expert was retained on Peace Wapiti's behalf (the "**Peace Wapiti Expert**") to determine the cause/origin of the fire. That expert's examination revealed that the breakers to which the heat trace tape was connected were not ground fault protected.

[10] In early to mid-May 2021, the Peace Wapiti Expert produced a report (the "**Peace Wapiti Report**"), which apparently contains a finding that the fire was caused by either faulty heat trace tape or improperly installed heat trace tape and breakers.

[11] Apparently, Peace Wapiti was informed by the Peace Wapiti Expert that the relevant breakers had an effective life of many years. Based on that advice, Peace Wapiti says it assumed the breakers in question were those that were installed when the portables were put into place.

[12] Operating on its assumption that the fire may have been caused by negligent construction, Peace Wapiti sued Graham and Magnum. 3M is named as a defendant owing to the possibility that the heat trace tape itself was defective.

[13] Flint has provided maintenance services, including electrical work, to Peace Wapiti since 2019. In 2020, it repaired and/or replaced heat trace tape at the Whispering Ridge Community School. Peace Wapiti has records which confirm that. Those records would have been within its possession at the time of the fire.

[14] In late-January, 2024, the relevant breakers were inspected by the experts retained by each of the parties (the "**January Inspection**"). Apparently, this inspection revealed that the breakers

were manufactured in 2019. This of course means that Magnum could not have ordered or installed them.

[15] I use the term "apparently" at paragraphs 10, 11 and 14 of this decision because the Peace Wapiti Report was not before me on the application, nor was any evidence concerning the January Inspection. Rather, the findings in the report and the outcome of the inspection were conveyed to me by Peace Wapiti's counsel. None of this was objected to by Flint's counsel.

[16] In early March, 2024, Peace Wapiti received additional information concerning the breaker manufacture date(s).

[17] In late July, 2024, Peace Wapiti received confirmation as to the date on which Magnum was last on-site in respect of the installation of the portables.

[18] The information received by Peace Wapiti in the first half of 2024 caused it to further review its records. It was during this review that it discovered that Flint had been on site in 2020 to complete the repair and/or replacement of heat trace tape.

[19] The materials filed in support of this application were served on Flint on August 12, 2024. That is when Flint first learned that Peace Wapiti sought to bring it into these proceedings as a defendant.

**Analysis:**

[20] Flint says the claim against it is time-barred and resists the amendment application on that basis.

[21] The application engages rule 3.74, as well as sections 3 (1) (a) and 6 (1) and (4) of the *Limitations Act*, R.S.A. 2000, c. L-12 (the "**Act**").

[22] Under r. 3.74 (2) (b), the Court may order that a person be added or substituted as a defendant to an action if the Court is satisfied that the order should be made. Pursuant to subrule (3), the Court may not make such an order if prejudice would result that could not be remedied by a costs award, an adjournment or the imposition of terms.

[23] The "classic rule" is that a pleading can be amended at any time, no matter the lateness or carelessness of the party seeking to amend: ***Balm v. 3512061 Canada Ltd.*, 2003 ABCA 98 at para 43.** There are exceptions, including where, unless permitted by statute, the amendment seeks to add a new party or a new cause of action after the expiry of a limitation period: ***Foda v. Capital Health Region*, 2007 ABCA 207 at para 10.**

[24] Section 3 (1) (a) of the Act requires a claimant to seek a remedial order within two years of the date on which the claimant knew, or ought to have known, through the exercise of reasonable diligence that: (1) the injury for which the remedial order is sought occurred, (2) the injury was attributable to the conduct of the defendant and (3) the injury, assuming liability on the part of the defendant, warranted bringing a proceeding. The test has both a subjective and objective element:

***Rick Balbi Architect Ltd. v. Condominium Corporation No. 08224320*, 2024 ABCA 37 at para 10.** The second element of the test is at issue here, namely when Peace Wapiti knew or ought to have known that its injury was potentially attributable to Flint's acts and/or omissions.

[25] Sections 6 (1) and (4) of the Act essentially extend the two-year limitation period by an additional year in circumstances in which a plaintiff seeks to add or substitute a defendant. In order for the extension to be engaged, it must be established that: (1) the added claim is related to the conduct, transaction or events described in the original pleading in the proceeding and (2) the proposed defendant received, within the limitation period applicable to the added claim plus the time provided by law for service of process, sufficient knowledge of the added claim that the potential defendant would not be prejudiced in maintaining a defence to the claim on the merits. There is no dispute that the first element of the test is met and no disagreement as to when Flint first became aware of the added claim.

[26] Therefore, by the combined operation of the Act sections referred to above, Peace Wapiti had three years from the date on which the discoverability-based limitation was triggered to provide Flint with notice of the added claim. Did it do so?

[27] Flint says that Peace Wapiti had the requisite constructive knowledge by the end of May, 2021. By that time, Peace Wapiti was in receipt of two reports, both of which drew the conclusion that heat trace tape played a role in the fire. Flint contends that armed with these reports, Peace Wapiti could have, through reasonable diligence, namely by examining its own records, determined that Flint conducted maintenance work at the school involving heat trace tape. If Flint's argument is accepted, more than three years passed between the date on which the elements of s. 3 (1) (a) of the Act were established and the date on which Flint first became aware of Peace Wapiti's claim.

[28] I cannot accept Flint's argument.

[29] A plaintiff will have constructive knowledge when the evidence shows it ought to have discovered the material facts by exercising reasonable diligence: ***Grant Thornton LLP v. New Brunswick*, 2021 SCC 31 at para 44.** The test is largely objective and looks at what a reasonable person in the same circumstances would either have known or discovered with reasonable diligence: ***Saito v. Lester Estate*, 2021 ABCA 179 at para 21.**

[30] The question here is whether through reasonable diligence, Peace Wapiti should have identified Flint prior to August 12, 2021 (three years prior to service of this application on Flint). The clock began to tick when the "material facts" (in this case, Flint's identity) ought to have been discovered by the exercise of reasonable diligence. It should be noted that the threshold to establish due diligence is not high: ***Canadian Natural Resources Limited v. Husky Oil Operations Limited*, 2020 ABCA 386 at para 32.**

[31] I am satisfied that Peace Wapiti acted with due diligence here.

[32] Within weeks of receiving the Fire Report, Peace Wapiti commissioned its own expert evaluation, which pointed to the improper installation of the heat trace tape/breaker combination

as a possible trigger of the fire. It received expert advice that there was a high likelihood that the breakers in question were the originally installed breakers. With the information received from its expert in mind, Peace Wapiti determined those entities which had a hand in the supply of labor and/or materials to the portable installations and commenced these proceedings against those parties in a timely way. There would have been no reason for Peace Wapiti to consider the involvement of any parties extrinsic to the construction process until after the January Inspection occurred. Flint received notice of the added claim within months of the earliest date on which the s. 3 (1) (a) elements were established.

**Conclusion:**

[33] I am satisfied that the order sought should be made. There is no evidence that the granting of such order would cause irreparable prejudice to Flint.

[34] Peace Wapiti's application is granted. If the parties cannot agree as to costs, they may appear before me in morning Chambers to make submissions on that point.

**Heard** on the 24th day of October, 2024.
**Dated** at the City of Grande Prairie, Alberta this 15th day of November, 2024.

**M. R. Park**
**A.J.C.K.B.A.**

**Appearances:**

Celina K. Chan, DDC Lawyers LLP
for the Applicant

Shad Chapman, Brownlee LLP
for the Respondent