



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *Valard Construction LP v. Labrador-Island Link
Limited Partnership*, 2025 NLCA 30

Date: August 20, 2025

Docket Number: 202401H0068

BETWEEN:

VALARD CONSTRUCTION LP

APPELLANT

AND:

LABRADOR-ISLAND LINK LIMITED
PARTNERSHIP, as represented by its general
partner, LABRADOR-ISLAND LINK GENERAL
PARTNER CORPORATION

FIRST RESPONDENT

AND:

GENERAL CABLE COMPANY LTD.

SECOND RESPONDENT

AND:

SNC-LAVALIN INC.

THIRD RESPONDENT

AND:

TIMBERLAND EQUIPMENT LTD.

FOURTH RESPONDENT

AND

Docket Number: 202401H0069

BETWEEN:

TIMBERLAND EQUIPMENT LTD.

APPELLANT

AND:

LABRADOR-ISLAND LINK LIMITED
PARTNERSHIP, as represented by its general
partner, LABRADOR-ISLAND LINK GENERAL
PARTNER CORPORATION

FIRST RESPONDENT

AND:

GENERAL CABLE COMPANY LTD.

SECOND RESPONDENT

AND:

SNC-LAVALIN INC.

THIRD RESPONDENT

AND:

VALARD CONSTRUCTION LP

FOURTH RESPONDENT

Coram: F.P. O'Brien, W.H. Goodridge and D.M. Boone JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador,
General Division 201801G1924
(2024 NLSC 117)

Appeal Heard: May 21, 2025
Judgment Rendered: August 20, 2025

Reasons for Judgment by:
Concurred in by:

D.M. Boone J.A.
F.P. O'Brien and W.H. Goodridge

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Authorities Cited:

CASES CITED: *Ryan v. Dew Enterprises Limited*, 2014 NLCA 11; *Labrador-Island Link Limited Partnership v. General Cable Company Ltd.*, 2024 NLSC 117; *Taylor v. Canada (Health)*, 2009 ONCA 487; *Anderson v. Canada (Attorney General)*, 2014 NLTD(G) 144; *Anderson v. Canada (Attorney General)*, 2013 NLTD(G) 154; *Anderson v. Canada (Attorney General)*, 2015 NLTD(G) 167; *Hynes v. Professional Diving Contractors Limited*, 2024 NLSC 13, rev'd on other grounds 2025 NLCA 26; *Cardar Investments Ltd. v. Thorne Riddell*, 1989 CanLII 4183 (ONSC), leave to appeal to ONCA refused, 1990 CarswellOnt 2590; *Adams v. Thompson, Berwick, Pratt & Partners*, 1987 CanLII 2590 (BCCA); *Yemen Salt Mining Corp. v. Rhodes-Vaughan Steel Ltd.*, 1976 CarswellBC 141, [1976] B.C.J. No. 57; *Westcoast Transmission Co. Ltd. v. Interprovincial Steel and Pipe Corp.*, 1985 CanLII 370 (BCSC); *Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.*, 2012 BCCA 22; *Bond Architects & Engineers Ltd v. McNamara Corp of Newfoundland*, 1988 CanLII 4443 (NLCA); *Hengeveld v. The Personal Insurance Company*, 2019 ONCA 497; *Davy Estate v. CIBC World Markets Inc.*, 2009 ONCA 763; *478649 Ontario Ltd. v. Corcoran*, 1994 CanLII 219 (ONCA); *Arcelormittal Tubular Products Roman S.A. v. Fluor Canada Ltd.*, 2013 ABCA 279, leave to appeal to SCC refused, 35568 (6 February 2014); *O'Connor Associates Environmental Inc. v. MEC OP LLC*, 2014 ABCA 140; *JD1H1 v. Budden*, 2020

NUCA 3; *Albionex (Overseas) Ltd. v. Agro Co. of Canada*, 1995 CanLII 16452 (MBCA); *Fan Yang v. McInnes Cooper*, 2024 NSSC 308; *Quintette Coal Ltd. v. Bow Valley Resource Services Ltd.*, [1986] CarswellBC 1195 (BCSC), [1986] B.C.J. No. 2008; *Leischner v. West Kootenay Power & Light Co. Ltd.*, 1986 CanLII 889 (BCCA); *Wells v. McBrine*, 1988 CanLII 3087 (BCCA), leave to appeal to SCC refused, 21309 (8 June 1989); *Ingles v. Tutkaluk Construction Ltd*, 2000 SCC 12, [2000] 1 S.C.R. 298; *Gander (Town) v. Pritchett (Guardian ad litem of)*, 2001 NFCA 40; *Cooper v. Hobart*, 2001 SCC 79, [2001] 3 S.C.R. 537.

STATUTES CONSIDERED: *Contributory Negligence Act*, RSNL 1990, c. C-33, ss. 3, 7, 2; *Negligence Act*, RSBC 1979, c. 298, s. 2(c); *Negligence Act*, RSBC 1996, c. 333, s. 2(c).

RULES CONSIDERED: *Rules of the Supreme Court*, 1986, SNL 1986, c. 42, Schedule D, rules 14.24(1)(a), 7, 12.

D.M. Boone J.A.:

[1] The appellants appeal the decision of a Supreme Court judge (the “applications judge”) dismissing their applications to either strike third party notices against them or alternatively order them to be removed as parties in the litigation.

BACKGROUND

[2] This litigation arises out of the construction of a system to transmit electricity from the Muskrat Falls generating station in Labrador to Soldier’s Pond on the island of Newfoundland. The system consists of electrical cables, transmission towers and related infrastructure.

[3] Labrador Island Link Limited Partnership (“LIL”) owns and operates the system. It contracted with numerous parties to build it.

[4] LIL engaged SNC-Lavalin Inc. (“SNC-Lavalin”) to provide engineering advice regarding procurement and design, as well as construction management.

[5] General Cable Company Ltd. (“General Cable”) designed and manufactured the cables and provided instructions for installation.

[6] Valard Construction LP (“Valard”) constructed the system and installed the cables.

[7] Timberland Equipment Ltd. (“Timberland”) supplied certain devices, known as sheaves, used by Valard as part of the pulley system to install the cables.

[8] Valard started the cable installation in November 2015. In March 2016, a defect in the installed cables, known as proud stranding, was observed. Proud stranding describes a defect in which one or more strands of cable “pop out”. This increases the diameter and disrupts the even surface of the cable.

[9] The proud stranding was noticed after Valard had installed 170 kilometres of cable. LIL then issued a stop-work order. The installed cables were removed. The supplied cables were modified and Valard replaced the installed cables with the modified cables. LIL paid for the modification of the cables and for the removal and replacement of the cables that had already been installed. LIL alleges that this work (the “Rectification”) cost \$57,552,556.

THE PLEADINGS

Statement of Claim

[10] LIL sued General Cable. It alleged that General Cable breached its contract with LIL by supplying defective cables and that General Cable was negligent in the design and manufacture of the cables.

Statement of Defence

[11] General Cable defended the LIL claim by denying the occurrence of proud stranding, denying that the cables were defective, and denying negligence in the design or manufacture of the cables.

[12] General Cable also pleaded in the alternative that if proud stranding occurred, then that resulted from installation and specifically from the acts or omissions of LIL, SNC-Lavalin, Valard, Timberland, other contractors/subcontractors, or consultants involved in the installation. It pleaded that the acts or omissions of SNC-Lavalin, Valard and Timberland were negligent and were also in breach of those parties’ respective agreements with LIL.

[13] General Cable also specifically pleaded the *Contributory Negligence Act*, RSNL 1990, c. C-33.

The Third Party Statement of Claim

[14] At the time that it filed its defence, General Cable issued a Third Party Statement of Claim (the “Third Party claims”) against SNC-Lavalin, Valard and Timberland (the “Third Parties”).

[15] In the Third Party Statement of Claim, General Cable alleged that SNC-Lavalin was negligent in the design it mandated for the cables, that Timberland was negligent in manufacturing the sheaves, and that each of LIL, SNC-Lavalin, Valard and Timberland were negligent in installing the cables.

[16] General Cable again pleaded the *Contributory Negligence Act*.

[17] As against the Third Parties, General Cable claimed “contribution, indemnity and other relief over and against any Judgment or costs awarded to” LIL against General Cable.

The Third Party Defences

[18] Each of the Third Parties filed a statement of defence in which they denied negligence and breach of contract. The Timberland defence also pleaded that its contract was solely with Valard and that it owed no contractual obligation or duty of care to LIL.

The Applications

[19] Valard and Timberland (but not SNC-Lavalin) each applied under Rule 14.24(1)(a) of the *Rules of the Supreme Court, 1986*, SNL 1986, c. 42, Schedule D, to strike the Third Party Statement of Claim because they say it did not disclose a reasonable cause of action against them. Each also applied, under Rules 7 and 12, to be removed as parties.

[20] Valard and Timberland also applied under Rule 7.04(2) to admit into evidence an amending agreement (the “Release Agreement”) between Valard and LIL which they say released and barred any claims against them based on deficiencies in installation.

THE DECISION OF THE APPLICATIONS JUDGE

[21] The applications judge dismissed both applications brought by each of Valard and Timberland (Decision, at paras. 109-114).

[22] On the Rule 14.24(1)(a) applications, the applications judge decided that the Third Party Statement of Claim set out a direct duty of care owed to General Cable by each of Valard and Timberland. This duty arose because it was reasonably foreseeable to each of them that negligent installation of the cables would cause harm to the cables and therefore loss to LIL that could be claimed against General Cable. He noted that the authorities did not establish an existing duty of care owing by a product installer to a product supplier but that no authority expressly negated the existence of such a duty, and as a novel claim it should be resolved at trial.

[23] The applications judge also found that the Third Party Statement of Claim sufficiently pleaded a claim for contribution or indemnity pursuant to the *Contributory Negligence Act*.

[24] As to the applications by Valard and Timberland to be removed as parties under Rules 7 and 12, the applications judge decided that the claim pleaded an allowable third party claim, that a *prima facie* cause of action existed and it arose from the same circumstances as the main action, and that it could be accommodated within the existing litigation. He referred to the decision in *Ryan v. Dew Enterprises Limited*, 2014 NLCA 11, as authority supporting his decision to dismiss the appellants' applications to be removed as parties.

[25] The applications judge admitted the Release Agreement into evidence for the "limited purposes of the *Contributory Negligence Act* and Rules 7 and 12 but would not consider the evidence for any aspect of the decision arising from Rule 14.24" (*Labrador-Island Link Limited Partnership v. General Cable Company Ltd.*, 2024 NLSC 117, at para. 25 (the "Decision")). He found, however, that the Release Agreement did not bar General Cable's claims against Valard and Timberland because General Cable was not a party to that agreement.

THE ISSUES ON APPEAL

[26] Valard and Timberland argue that the applications judge ought to have found that the Third Party Statement of Claim failed to disclose a cause of action against them. They also argue that the applications judge ought to have found that they were neither necessary nor proper parties in the litigation between LIL and General Cable,

and set aside the Third Party Notice pursuant to Rule 7.04(2)(a) and Rule 12.06(1)(g). The issues they raise are:

- 1) Did the applications judge err in law or in mixed fact and law in finding that the LIL claim against General Cable was not limited to only those damages attributable to the fault of General Cable?
- 2) Did the applications judge err in law in finding that the Third Party Statement of Claim disclosed a cause of action for contribution and indemnity?
- 3) Did the applications judge err in law in finding that the Third Party Statement of Claim disclosed a direct claim against Valard and Timberland?
- 4) Did the applications judge err in mixed fact and law by finding that the record did not support a finding that the claims by General Cable against Valard and Timberland were barred by the Release Agreement?

ANALYSIS

ISSUE #1: Did the applications judge err in law or in mixed fact and law in finding that the LIL claim against General Cable was limited to only those damages attributable to the fault of General Cable?

[27] Valard and Timberland say that the LIL Statement of Claim limited its claim only to damages arising from the fault of General Cable. Consequently, they say General Cable is not exposed in the LIL action to a claim for any share of the damages that resulted from negligence in cable installation. Therefore, they argue that General Cable can have no claim against them for contribution.

[28] The applications judge rejected this argument. He found that the Statement of Claim against General Cable was “quite specific in alleging negligence in design, manufacturing and adequate consultation respecting the features of the cable supplied” (Decision, at para. 35). However, he also found that LIL “has claimed damages arising from proud stranding ...[and] has not distinguished between damages caused by design and installation” (Decision, at para. 42). Therefore, he found that General Cable was exposed to a claim for 100% of the Rectification costs.

[29] Valard and Timberland rely on *Taylor v. Canada (Health)*, 2009 ONCA 487, for the proposition that it is permissible for a plaintiff in a negligence action to claim only the damages resulting from the several liability of the defendant. Such a pleading obviates the possibility of the defendant being held liable for greater damages than their individual negligence caused. If the pleading is limited in that manner, then the defendant will have no claim against other alleged tortfeasors for contribution and indemnity.

[30] A brief discussion of the background to the case of *Taylor* is helpful to understand the distinction that the applications judge drew between that case and this one.

[31] *Taylor* was a class action against Health Canada for alleged negligent regulation of dental implants. Health Canada issued a third party notice against the representative plaintiff's dental surgeon and indicated that it would issue such notices against the dental surgeons for the members of the class.

[32] The plaintiff maintained that she was seeking only the damages attributable to Health Canada's negligence. However, the case management judge found on two occasions that the pleadings were not sufficiently limited to such a claim. He suggested wording that the plaintiff would have to use to limit her damages in a way to avoid the third party claims.

[33] The third iteration of the statement of claim adopted this suggestion and stated that the plaintiff sought "damages that would be apportioned to the defendant in accordance with the relative degree of fault that is attributable to the defendant's negligence" and that her "claim is against the Defendant for those damages that are attributable to its proportionate degree of fault, and she does not seek, on her own behalf or on behalf of the Class, any damages that are found to be attributable to the fault or negligence of any other person, or for which the Defendant could claim contribution or indemnity." (*Taylor*, at para. 11).

[34] On the basis of the last amended statement of claim and reply, the case management judge struck the third party notices issued by Canada (*Taylor*, at paras. 11-12, 33). His decision was upheld by the Court of Appeal which found, at paragraph 22, that "because Ms. Taylor has limited her claim to those damages attributable to Health Canada's fault, Health Canada can have no claim over against the doctor or the hospital for the damages claimed by Ms. Taylor and the other class members."

[35] A result similar to that in *Taylor* was determined by the Supreme Court in a different class action proceeding. In *Anderson v. Canada (Attorney General)*, 2014 NLTD(G) 144, a class comprised of indigenous people sued Canada alleging that they were forced to involuntarily attend schools and were subject there to abuse and conduct that denied their culture. The class relied on two causes of action: breach of fiduciary duty and breach of a general duty of care.

[36] Canada issued a third party claim against Newfoundland and Labrador alleging that the negligence of the provincial government contributed to any damages that the class might prove. Canada conceded that it could not seek apportionment of damages that resulted from its breach of fiduciary duty, but it maintained an apportionment claim for damages resulting from any breach of its general duty of care. The representative plaintiffs applied to strike the third party claims but their applications were not allowed (*Anderson v. Canada (Attorney General)*, 2013 NLTD(G) 154).

[37] The matter proceeded to trial. After several months of trial, the representative plaintiffs agreed with the province that they would amend their pleadings in such a manner that the third party claim against it would no longer be viable. They accomplished this by withdrawing their claims against Canada for breach of a general duty of care. The court therefore struck the third party claims, finding that, “the third party claim cannot rest upon the Plaintiffs’ cause of action relating to fiduciary duty, and because that is the only remaining cause of action, in this case the third party claim must be struck.” (*Anderson v. Canada (Attorney General)*, 2015 NLTD(G) 167, at para. 107).

[38] *Taylor* and *Anderson* demonstrate that a plaintiff can limit the scope of a claim so as to restrict claims to damages resulting only from the several fault of the defendant. If the claim is restricted in that fashion, then third party claims for contribution and indemnity will not be viable. The court can determine the question of apportionment between the defendant and non-parties, and issue judgment against the defendant for only its several contribution to the plaintiff’s total damages.

[39] In this case, Valard and Timberland say that the claim by LIL is limited to the damages attributable only to any negligence of General Cable. They argue that the applications judge erred in characterizing LIL’s claim as broader than that.

[40] The LIL claim against General Cable does allege negligence only in the design and manufacture of the cables. It makes no allegation of negligence in installation because General Cable was not involved in installation.

[41] But LIL claims from General Cable the entire costs of Rectification caused by proud stranding.

[42] A result, like the one in *Taylor* or the *Anderson* cases, requires precise and clear pleadings restricting the plaintiff's claim to damages attributable only to the fault of the defendant. Only then can it be said that a defendant clearly has no case to claim apportionment against other contributing tortfeasors.

[43] The Statement of Claim in this case does not restrict the claim against General Cable to its several fault. The scope of the claim is not limited in the manner described in *Taylor* and *Anderson*, and those cases are of no assistance to the appellants.

[44] The applications judge made no error in his determination of the scope of the LIL claim.

[45] I would dismiss this ground of appeal.

ISSUE #2: Did the applications judge err in law in finding that the Third Party Statement of Claim disclosed a cause of action for contribution and indemnity?

[46] In its Defence and Third Party Statement of Claim, General Cable denied that proud stranding of the cables occurred, and it denied negligence or breach of contract. In the alternative, it pleaded that if proud stranding occurred then it resulted from installation and specifically from the acts or omissions of LIL, SNC-Lavalin, Valard, Timberland and other contractors involved in the installation. It pleaded the *Contributory Negligence Act*.

[47] The applications judge found that General Cable's pleadings disclosed the elements of a claim under the *Contributory Negligence Act* (Decision, at para. 78).

[48] That conclusion seems a straightforward application of the *Contributory Negligence Act*. The relevant provisions of the statute are as follows:

3. Where damage or loss has been caused by the fault of 2 or more persons, the court shall determine the degree in which each was at fault, and where 2 or more persons are found at fault they shall be jointly and individually liable to the person suffering damage or loss, but as between themselves, in the absence of a contract express or implied, they shall be liable to make contribution to and indemnify each other in the degree in which they are respectively found to have been at fault.

7. Where it appears that a person not a party to an action is or may be wholly or partly responsible for the damages claimed, that person may be added as a party defendant or may be made a 3rd party to the action, upon the terms that are considered just.

[49] The operation of the *Contributory Negligence Act* exposes General Cable to several liability to LIL for the full costs of Rectification. It also provides that General Cable can claim contribution and indemnity from others whose fault it claims contributed to the need for Rectification. Finally, it provides a statutory right to add those others as third parties.

[50] Valard and Timberland raised three arguments in opposition to this seemingly straightforward application of the *Contributory Negligence Act*.

[51] First, Valard and Timberland argue that the applications judge misapplied the test for adding third party claims set out in the decision of this Court in *Ryan*.

[52] Second, Valard and Timberland argue that the negligence that General Cable alleges against the Third Parties is attributable to LIL. Therefore, they say that these claims can be asserted in defence of the LIL claim and General Cable is not exposed to a judgment for the whole Rectification costs.

[53] Third, Valard and Timberland argue that a third party claim for contribution from other wrongdoers is not viable when the pleading also alleges that the plaintiff is contributorily negligent.

Application of the analysis from Ryan

[54] The applications judge accepted Valard and Timberland's argument that the question of whether the third party claims ought to be struck had to be determined after consideration of Rule 7 (specifically whether they were necessary and proper parties) and Rule 12 (third party claims). The applications judge also accepted the following distillation of the principles from *Ryan* expressed in *Hynes v. Professional Diving Contractors Limited*, 2024 NLSC 13, rev'd on other grounds 2025 NLCA 26:

[43] The parties agree that the current approach on an application for leave to issue a third party notice, as set out in *Ryan v. Dew*, involves a three-part analysis:

- 1) The third party claim must fall within the scope of allowable third party claims under the *Rules* and the *Act*, R.S.N.L. 1990, c. J-4;

- 2) The facts and allegations relied on in the third party claim must ground a cause of action, to the standard of an arguable case; and,
- 3) The third party claim must be able to be accommodated within the existing litigation.

[55] I see no need to engage in any analysis of those principles in this case for a simple reason. Those principles have no application to the question whether a third party claim can be asserted under the *Contributory Negligence Act*.

[56] In *Ryan*, the court noted at paragraph 34 that the third party claims for contribution and indemnity were not asserted under the *Contributory Negligence Act*. Therefore, the *Contributory Negligence Act* was only “tangentially relevant to the issues engaged” (*Ryan*, at para. 46).

[57] The court in *Ryan* said in *obiter*, at paragraph 48, that the *Contributory Negligence Act*, sections 3 and 7:

[48] ...create a right to contribution between two or more tortfeasors who cause damage by their “fault” (section 3) and provide the procedural mechanism by which the right can be asserted and adjudicated if all tortfeasors have not been brought before the court at the suit of the plaintiff (section 7). Section 7 allows a non-party in a tort claim to be brought in as a third party with a view to ensuring that the person so brought in will contribute to any judgment that might ultimately be made, if the third party is also found to be at fault. This procedure exists outside of the procedures set out in the Rules of Court which apply in other circumstances.

[58] Although this may have been stated in *obiter*, I would affirm this as an accurate statement of the law that applies in this case. The right to add third parties under the *Contributory Negligence Act* “exists outside of the procedures set out in the Rules of Court which apply in other circumstances.”

[59] That is not to say that the provisions of the *Rules of the Supreme Court, 1986*, including Rules 7 and 12, do not apply to third party claims under the *Contributory Negligence Act*. But the *Act* creates a statutory right to claim contribution and the right to assert such claims does not depend on the *Rules*.

[60] The same conclusion has been reached in Ontario. In *Cardar Investments Ltd. v. Thorne Riddell*, 1989 CanLII 4183 (ONSC), leave to appeal to ONCA refused, 1990 CarswellOnt 2590, the Divisional Court said:

...The test [for adding third parties under the relevant rules] ... applies to a third party claim made under rule 29.01 but not to a third party claim made under s.6 of the Negligence Act. The requirement for adding a third party under the Negligence Act is set out in that Act. Section 6 of the Negligence Act provides in effect that if it appears that a person not already a party may be found liable under s.2 of the Act to contribute to the plaintiff's damages, such person may be made a third party "in the manner prescribed by the rules of practice for adding third parties". To confine s.6 to those persons that can be made third parties under rule 20.01 would make s.6 redundant, for such persons could have been made third parties under the rule without resorting to s.6. Section 6 requires a defendant to use the manner for adding third parties provided for in the rules, but does not require that he satisfy the requirements for adding a third party set out in the rules.

[61] Therefore, whether General Cable could add the third party claims does not depend on application of the principles from *Ryan*. There is no need to consider whether there was any error in the applications judge's analysis.

The Adams Principle

[62] Valard and Timberland argue that the third party claims are not viable because the negligence alleged against the Third Parties is attributable to LIL. They say that, as between LIL and General Cable, LIL was responsible for installation of the cables. Therefore, General Cable's allegations of negligence in installation of the cables are really allegations of negligence in the performance of obligations owed by LIL. Any fault in installation is therefore attributable to LIL. General Cable can raise that fault as a defence against the LIL claim. There is consequently no risk to General Cable that it is exposed to the claim for the full amount of the Rectification costs. General Cable can raise these allegations of fault directly against LIL by way of defence and no third party claim lies against Valard or Timberland.

[63] This argument was derived from a line of cases originating in *Adams v. Berwick, Pratt & Partners*, 1987 CanLII 2590 (BCCA).

[64] In *Adams*, a development project was ordered stopped by the municipality. The developer sued its engineers for alleged negligent design and delay. The engineers alleged in a third party claim that the developer's solicitors provided negligent advice that caused the developer to miss the opportunity to mitigate some of the damages claimed against the engineers. The trial judge struck the third party claim.

[65] The Court of Appeal dismissed the engineers' appeal, holding that authorities establish that "[w]here the fault alleged against the proposed third party is in fact the

fault of the plaintiff, the defendant can raise the default by way of defence, making third party proceedings unnecessary” (at para. 14) and “a third party claim will not lie against another person with respect to an obligation belonging to the plaintiff which the defendant can raise directly against the plaintiff by way of defence” (at para. 16). Valard and Timberland say these statements have become accepted in Canadian law as the *Adams* principle.

[66] The authorities referred to by the court in *Adams* were British Columbia trial division cases *Yemen Salt Mining Corp. v. Rhodes-Vaughan Steel Ltd.*, 1976 CarswellBC 141, [1976] B.C.J. No. 57 and *Westcoast Transmission Co. Ltd. v. Interprovincial Steel and Pipe Corp.*, 1985 CanLII 370 (BCSC). In both those cases, the court struck third party claims issued by the defendant piping manufacturers against inspectors hired by the owners. These cases continue to be cited in support of the *Adams* principle.

[67] The *Adams* principle has been confirmed by the British Columbia Court of Appeal on numerous occasions (see *Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.*, 2012 BCCA 22). It has also been accepted, although sometimes not applied because *Adams* was distinguished, by other appellate courts, including this Court: *Bond Architects and Engineers Ltd v. McNamara Corp of Newfoundland*, 1988 CanLII 4443 (NLCA); *Hengeveld v. The Personal Insurance Company*, 2019 ONCA 497; *Davy Estate v. CIBC World Markets Inc.*, 2009 ONCA 763; 478649 *Ontario Ltd. v. Corcoran*, 1994 CanLII 219 (ONCA); *Arcelormittal Tubular Products Roman S.A. v. Fluor Canada Ltd.*, 2013 ABCA 279, leave to appeal to SCC refused, 35568 (6 February 2014); *O’Connor Associates Environmental Inc. v MEC OP LLC*, 2014 ABCA 140; *JD1H1 v. Budden*, 2020 NUCA 3; and *Albionex (Overseas) Ltd. et al. v. Agro Co. of Canada Ltd. et al.*, 1995 CanLII 16452 (MBCA).

[68] Valard and Timberland say that this case falls squarely within the confines of the *Adams* principle, and that the applications judge erred in law by not applying it.

[69] Respectfully, however, Valard and Timberland ask more of the *Adams* principle than it can provide. This may be a consequence of the broad language used in *Adams*. For example, at one point the court in *Adams* described the principle as applying “[w]here the fault alleged against the proposed third party is in fact the fault of the plaintiff” (at para. 14); at another where the “default was attributable to the plaintiff” (also at para. 14); and at another, “with respect to an obligation belonging to the plaintiff” (at para. 16).

[70] However, notwithstanding the breadth of the language used, the *Adams* principle has been applied rather narrowly. The limits of the principle have been recognized consistently, although not consistently described.

Limits of the Adams principle defined by category

[71] The circumscribed application of the *Adams* principle begins with the *Adams* case itself:

[19] It remains to consider those circumstances in which a claim against a proposed third party is, in fact, a claim with respect to an obligation of the plaintiff.

[20] Generally speaking, all acts falling within the scope of an agency between the proposed third party and the plaintiff fall into the category of acts for which the plaintiff is responsible and hence are not the proper subject to third party claims. At the same time, it must be recognized that a person acting as agent to the plaintiff may undertake duties toward co-contractors and others outside the scope of his agency. To put it another way, the plaintiff's agent may, as a consequence of his relations with other contractors on the project, assume duties toward persons other than the plaintiff, for breach of which the plaintiff would not be vicariously liable. It was the possibility of such claims which led McEachern C.J.S.C. in *Quintette*, supra, to allow the third party claim to stand.

[21] Another situation where a third party claim cannot be raised because the obligation is essentially that of the plaintiff is where the claim is one that the proposed third party should have advised or assisted the plaintiff to mitigate his damages. In that situation, like the situation of agency, third party proceedings are redundant because the defendant can obtain any relief to which he may be entitled by reduction of the plaintiff's claim if he makes out the defence of failure to mitigate.

[72] In *Hengeveld*, at paragraph 32, the Ontario Court of Appeal said that *Adams* describes two situations in which a third party's negligence will be attributed in law to the plaintiff: (1) when the alleged negligence is committed by the plaintiff's agent, within the scope of agency, and (2) when the third party's alleged "negligence relates to advice about the plaintiff's duty to mitigate a loss that has already occurred". The Alberta Court of Appeal in *Arcelormittal*, at paragraph 21, the Nunavut Court of Appeal in *JD1H1*, at paragraph. 14, and the Nova Scotia Supreme Court in *Fan Yang v. McInnes Cooper*, 2024 NSSC 308, at paragraph 62, described the limits of the *Adams* principle in similar terms.

[73] The categorical limits on the *Adams* principle are reflected in the fact that the principle has been applied most frequently in cases involving third party pleadings

against professionals (inspectors, lawyers, engineers, financial advisors) retained by the plaintiff to either help it avoid a loss in the first place or mitigate the loss after it has occurred.

Limits of the Adams principle defined by relationship between plaintiff and third party

[74] In *Adams*, at paragraphs 15-16, the court distinguished the situation before it from that in *Quintette Coal Ltd. v. Bow Valley Resource Services Ltd.*, [1986] CarswellBC 1195 (BCSC), [1986] B.C.J. No. 2008. In *Quintette*, the court concluded that the fault alleged by the defendant engineer against the third party contractor could not be attributed to the plaintiff because the contractor was independent of the plaintiff owner. Therefore, its negligence could not be imputed to the plaintiff (at paras. 13, 37).

[75] The reasoning in *Quintette* is grounded in viewing the scope of the *Adams* principle from the point of view of the intended third party and particularly whether the third party is independent of the plaintiff. The reasoning from *Quintette* has been adopted and applied in other cases to distinguish *Adams* (see e.g., *Arcelormittal*, at paras. 24-25.)

Limits of the Adams principle defined by obligations of the plaintiff

[76] Other courts have defined the limits of the *Adams* principle based on the obligations owed by the plaintiff viewed through the lens of the case against the defendant. For instance, in *Cardar*, the Ontario Divisional Court defined the principle as arising when the plaintiff has an absolute, non-delegable, obligation to do something because then the failure of the third party to perform that obligation “will be treated as if the plaintiff failed to perform it”. Similarly, in *O’Connor*, at paragraph 30, the Alberta Court of Appeal said that “third party procedure is also inappropriate where the plaintiff is legally responsible for the conduct alleged against the third party.”

Limits of the Adams principle defined by nature of plaintiff’s loss

[77] Still other cases have circumscribed the *Adams* principle by reference to the loss claimed by the plaintiff. In *Davy Estate*, at paragraph 23, the Ontario Court of Appeal described mitigation cases where *Adams* could be distinguished as claims “against a party alleged to have been implicated in the events giving rise to the initial loss”. *Westcoast* and *Yemen*, on which *Adams* relied, were cases where the third

parties were retained by the plaintiff specifically to avoid the loss; the only transaction at issue was the supply of pipe and the owners' inspectors were alleged to have been negligent in failing to notice that the pipe was defective. *Corcoran* was a case where the claim against the real estate agent was for negligent misrepresentation and the third party claim was allowed against the solicitor because the allegation was that the loss could have been avoided if the solicitor had not negligently reviewed the Agreement.

This case does not fit within the Adams principle

[78] There was nothing unusual about the way the project for the construction of the electrical transmission system was organized. LIL, as owner of the project, contracted separately with different parties to design the system, manage its construction, supply the necessary materials, and build the system.

[79] Yet, Valard and Timberland did not cite any case in which the *Adams* principle has been applied in litigation arising out of a construction project organized in that manner.

[80] Regardless of which way the limits of the *Adams* principle are described, this case does not fit within it.

[81] The third party claim does not allege that Valard or Timberland were the agents of LIL, or that they were hired to mitigate its losses.

[82] The third party claim alleges that each of Valard and Timberland were independent contractors of LIL.

[83] Valard and Timberland argue that installation of the cables was the obligation of LIL and therefore that any negligence in that process was attributable to LIL, and General Cable could raise such negligence as a defence. It is accurate to say that General Cable had no responsibility to install the cables. But Valard and Timberland are not accurate in saying that LIL was obligated to install the cables. LIL had no obligation to do so. LIL might well defend a claim of contributory negligence on its part by asserting that it hired competent contractors to design, manage and install the system (*Cardar* and *Corcoran*).

[84] Finally, the pleadings allege that the loss suffered by LIL was discovered when installation was significantly underway, and it is alleged that the loss occurred due to either design and manufacture of the cable, or installation, or both. The third

party claim alleges that Valard and Timberland contributed to that initial loss suffered by LIL.

[85] Valard argued the *Adams* principle before the applications judge. He did not cite the principle in his decision. But he did find that his conclusions regarding apportionment responded “to the submission of Valard that the claim of General [Cable] that the proud stranding was caused by poor installation is not a third party claim but a defence to the claim of LIL” (Decision, at para. 80).

[86] I find no error of law in the failure of the applications judge to apply the *Adams* principle to preclude the third party claims against Valard and Timberland.

Claims among tortfeasors when the plaintiff is contributorily negligent

[87] At the hearing of the appeal, Valard made a further argument, based on the *Contributory Negligence Act*, that the third party claims were not viable. The basis for the argument is this passage from the decision in *Westcoast*:

[8] It has been held that where the plaintiff is partially at fault s.1 applies, and that each other person who is also at fault is liable only to the extent that he is personally found at fault. There is no joint and several liability such that one defendant would be liable to the plaintiff for the degree of fault found against the second defendant, with the concomitant right to claim indemnity from the second defendant: *Cominco Ltd. v. C.G.E. Co.* (1983), 1983 CanLII 694 (BC CA), 50 B.C.L.R. 145, 4 D.L.R. (4th) 186 (C.A.), and *Leischner v. West Kootenay Power & Light Co.*, 1983 CanLII 406 (BC SC), 45 B.C.L.R. 204, [1983] 5 W.W.R. 166, 35 C.P.C. 151, 150 D.L.R. (3d) 242 (S.C.).

[9] It follows that if *Westcoast* is contributorily negligent for the loss, Ipsco can be found liable only to the extent to which it is personally found at fault. Ipsco cannot be found liable to pay *Westcoast* anything on account of Hanson's fault. In such circumstances Ipsco would have no claim for contribution or indemnity against Hanson.

[88] This interpretation of the British Columbia statute has been affirmed by the British Columbia Court of Appeal (*Leischner v. West Kootenay Power & Light Co. Ltd.*, 1986 CanLII 889 (BCCA), at paras. 74-81; *Wells v. McBrine*, 1988 CanLII 3087 (BCCA), at para. 22, leave to appeal to SCC refused, 21309 (8 June 1989)).

[89] Valard says that the *Contributory Negligence Act*, section 3, is equivalent to the British Columbia statute discussed in *Westcoast*. Valard argues that because the Third Party claim alleges that each of LIL and/or the Third Parties was responsible

for the proud stranding, then each of them could only be held liable for their several contribution to the Rectification costs, and there would be no right to contribution among them. Valard says that it was an error of law for the applications judge not to apply this interpretation of the *Contributory Negligence Act*.

[90] I would not accede to that argument.

[91] In *Ingles v. Tutkaluk Construction Ltd.*, 2000 SCC 12, [2000] 1 S.C.R. 298, the Supreme Court of Canada distinguished the British Columbia cases from cases interpreting the equivalent Ontario legislation:

[58] The city also argues that it should not be held to be jointly and severally liable with the contractor and that it should be liable only for its portion of the fault. To support this contention, the city relies on authorities from British Columbia that have held that where the plaintiff is contributorily negligent, multiple tortfeasors will only be liable to the extent of their fault; see, for example, *Leischner v. West Kootenay Power & Light Co.* (1986), 24 D.L.R. (4th) 641 (B.C.C.A.). I do not find these authorities to be applicable in this case. The legislation in British Columbia differs significantly from the legislation in Ontario. Section 2(c) of the *Negligence Act*, R.S.B.C. 1979, c. 298, reads as follows:

. . . as between each person who has sustained damage or loss and each other person who is liable to make good the damage or loss, the person sustaining the damage or loss shall be entitled to recover from that other person the percentage of the damage or loss sustained as corresponds to the degree of fault of that other person. [Emphasis added.]

Therefore, it is possible to read the British Columbia legislation as allowing contributorily negligent plaintiffs to recover only the percentage of the damage sustained that corresponds to the degree of fault of each of the individual tortfeasors.

(Underlining in original.)

[92] There is, similarly, no equivalent of the cited section 2(c) of the *Negligence Act*, RSBC 1979, c. 298, (now section 2(c) of the *Negligence Act*, RSBC 1996, c. 333) in the *Contributory Negligence Act*.

[93] The interpretation of the *Contributory Negligence Act*, section 2, urged by Valard has been rejected by this Court. In *Gander (Town) v. Pritchett (Guardian ad litem of)*, 2001 NFCA 40, at paragraph 41, the Court adopted this statement of the law from paragraph 55 of *Ingles*:

[55] ...When there are two or more tortfeasors, and a plaintiff has also been found negligent, the proper approach to apportionment is to first reduce the extent of the recoverable damages in proportion with the plaintiff's negligence, and then to apportion the remaining damages between the defendants, in accordance with their fault; see, for example, *Fitzgerald v. Lane*, [1988] 2 All E.R. 961 (H.L.); *Bow Valley v. Saint John Shipbuilding*, *supra*; *Colonial Coach Lines Ltd. v. Bennett*, [1968] 1 O.R. 333.

[94] The Court in *Pritchett* ordered that the tortfeasors were jointly and severally liable to the plaintiff, and that as between the tortfeasors they were liable to make indemnity to each other sufficient to account for their respective proportionate liability.

Conclusion on the claims for contribution and indemnity under the Contributory Negligence Act

[95] I find no error in the decision of the applications judge that the Third Party claims disclosed viable claims for contribution and indemnity under the *Contributory Negligence Act*.

[96] I would dismiss this ground of appeal.

ISSUE #3: Did the applications judge err in law in finding that the Third Party Statement of Claim disclosed a direct claim against Valard and Timberland?

[97] The applications judge found that the pleadings disclosed a direct duty of care owed to General Cable by the Third Parties. He acknowledged, at paragraph 44, that “[t]here is no duty of care established in law between an installer and a manufacturer of a product.” However, he applied the framework from *Cooper v. Hobart*, 2001 SCC 79, [2001] 3 S.C.R. 537, to what he described as a novel duty of care, and then, at paragraph 54, found that “the facts of this case as set out in the pleadings support on a *prima facie* basis the existence of a duty of care that should not be resolved on a procedural motion.” He based his duty of care analysis on “General [Cable]’s claim against the Third Parties is to ensure that it will not be held 100% responsible for damages arising from proud stranding should negligence in installation be found to be at least a partial cause” (Decision, at para. 42). He noted in reference to the second step of the *Cooper* analysis “the Court suggested there may be policy reasons outside the relationship among the parties in any individual case which would obviate

liability. However, it has not been argued that this is relevant in this case” (Decision, at para. 44).

[98] The Third Party Statement of Claim did not expressly plead that the Third Parties had breached a direct duty of care owed to General Cable. This position was developed by General Cable during argument on the motion to strike.

[99] Therefore, this appeal can be resolved without deciding whether the applications judge was correct in finding a viable claim based on breach of a direct duty of care. The application to strike, and this appeal, can be decided on the basis of the finding that the Third Party claim disclosed viable claims for contribution and indemnity.

ISSUE #4: Did the applications judge err in mixed fact and law by finding that the record did not support a finding that the claims by General Cable against Valard and Timberland were barred by the Release Agreement?

[100] Valard and Timberland maintained that the Release Agreement constituted an unqualified release of claims related to the proud stranding against them. The applications judge admitted the Release Agreement into evidence for the purpose of Valard and Timberland’s applications to be removed as parties.

[101] The applications judge found that General Cable was not a party to the Release Agreement and therefore it could not be relied on to bar its claims against the Third Parties. He also decided that LIL’s claims against General Cable did not limit it from claiming for loss that might be attributed to deficiencies in installation.

[102] The applications judge determined that the scope of the release in the Release Agreement (which excepted claims for “Defects in the Work”) and the question whether Timberland could claim as a beneficiary of the release were best left to full trial.

[103] I find no palpable or overriding error underpinning the applications judge’s conclusion that the evidence before him regarding the interpretation and scope of the Release Agreement was insufficient to decide the Rule 7.04(2) application, and to dismiss that application on that basis. A full trial may not be necessary but certainly a process allowing for more fulsome fact finding would be required.

[104] I would dismiss this ground of appeal.

DISPOSITION

[105] I would uphold the decision of the applications judge dismissing the applications of Valard and Timberland seeking to strike the third party claims or to be removed as parties.

[106] I would therefore dismiss the appeals. I would award General Cable its Column III costs of the appeals against Valard and Timberland (neither LIL nor SNC-Lavalin participated in the appeal).

D.M. Boone J.A.

I concur : _____
F.P. O'Brien J.A.

I concur : _____
W.H. Goodridge J.A.