

**CONSTRUCTION LAW:
YEAR IN REVIEW**

Infrastructure, Construction & Procurement Group
Webinar: February 28, 2023

CLARK WILSON

SPEAKERS:
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AGENDA

PART 1 – Builders Lien Update : Satinder Sidhu, Moderator and Kim Do

PART 2 – Contract Requirements: Rosalie Clark and Denny Chung

PART 3 – Construction Defects: Denny Chung

PART 4 – Procurement: Roy Nieuwenburg, K.C. and Denny Chung

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AGENDA

PART 5 – Bonds: Roy Nieuwenburg, K.C. and Rosalie Clark

PART 6 – Prompt Payment Legislation: Scott Lamb and Dan Melnick

PART 7 – Centurion Apartment Properties Limited Partnership v. Loco Investments Inc.: Kim Do

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PART 1:
Builders Lien Update

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Outline

- **Time Limits to File a Lien**
 - *Frontier Kemper Constructors, Inc. v. Rio Tinto Alcan Inc.*, 2022 BCSC 868
- **Lienable Lands**
 - *JVD Installations Inc. v. Skookum Creek Power Partnership*, 2022 BCCA 81, leave to appeal to SCC refused, 2023 CanLII 8266 (SCC)
- **Discharging a Lien**
 - *Metro-Can Construction (PE) Ltd. v. Escobar et al.*, 2022 BCSC 1042
- **Enforcing a Lien**
 - *Trans Canada Trenchless Ltd. v. Targa Contracting (2013) Ltd.*, 2022 BCSC 438
- **Improper Liens**
 - *Century Group GP Co. Ltd. v. KRS Excavating Ltd.*, 2022 BCSC 357

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Builders Liens in BC

- Builders liens are “extraordinary tools” for unpaid contractors, subcontractors or suppliers to ensure that cost of unpaid labour and materials are secured.
- Liens can impede the sale of property, halt construction financing or put an owner (or persons with an interest in property) in default of other 3rd party agreements (financing agreements, leases).
- Lien claimants must strictly comply with the requirements under the **Builders Lien Act, SBC 1997, c 45** (the “BLA”).
- This past year, our courts continued to consider how liens operate in BC, including: time limits to file, what lands are lienable, procedural requirements to assert/discharge a lien, holdbacks, enforcing a lien, and costs and damages for wrongful filing.

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What are the time limits to file a lien?

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Time Limits to File a Lien

- S. 20 of the BLA provides that a claimant must file a claim of lien no later than 45 days after the earliest of the following dates:
 - Certificate of completion for a contract or subcontract has been issued;
 - If no certificate of completion, head contract has been completed, abandoned or terminated; or
 - If no head contract, the improvement has been completed or abandoned.
- S. 22 of the BLA provides if a lien is not filed within the time prescribed by the BLA, the lien is extinguished.
- S. 25(1)(a) of the BLA provides that an applicant can apply to the court to remove the lien on the basis that the lien was filed out of time.

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*Frontier Kemper Constructors, Inc.
v. Rio Tinto Alcan Inc., 2022 BCSC 868*

Facts

- Rio Tinto Alcan Inc. ("**Rio Tinto**") contracted with joint venture ("**FKA**") for work on tunnels carrying water to Rio Tinto's power generation station.
- Pursuant to termination provisions in the contract, Rio Tinto delivered a termination notice to FKA alleging breach of contract.
- The termination provisions allowed FKA the opportunity to cure the breach. FKA disputed the validity of the termination notice and argued Rio Tinto did not effectively terminate the contract.
- FKA filed a lien for \$96,941,540.96.

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*Frontier Kemper Constructors, Inc.
v. Rio Tinto Alcan Inc., 2022 BCSC 868*

Facts

- Rio Tinto argued that the time for filing was triggered when the termination notice was sent and FKA's lien was filed 2 days late.
- Rio Tinto brought an application pursuant to s. 25 of the BLA to cancel the lien on the basis that it was filed out of time.
- Rio Tinto acknowledged that the validity of the termination remained a live issue that could not be decided on the s.25 interlocutory application.

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*Frontier Kemper Constructors, Inc.
v. Rio Tinto Alcan Inc., 2022 BCSC 868*

Issue

- Was the running of time triggered when Rio Tinto sent the termination notice?
- If so, was the lien filed 2 days late?

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*Frontier Kemper Constructors, Inc.
v. Rio Tinto Alcan Inc., 2022 BCSC 868*

Key Findings: 45 Days Not Triggered

- Court concluded that the lien was not filed out of time.
- Whether or not FKA breached the contract and then failed to adequately remedy any breach, justifying termination, went to the heart of the dispute between the parties and would require findings of fact at trial.
- Court noted that the BLA does not define "terminated" and found that "purported termination" would not be sufficient to trigger the 45-day lien filing period.
- Time to file a lien did not start running with delivery of the termination notice.

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*Frontier Kemper Constructors, Inc.
v. Rio Tinto Alcan Inc., 2022 BCSC 868*

Key Findings: Lien Not Out of Time

- With respect to whether the lien was filed 2 days late, the 45-day lien filing period expired on a Saturday and FKA filed the lien the following Monday.
- FKA argued that the Land Title Office was closed on Saturday so the deadline was properly extended to the next business day, Monday (relying on s. 25(4)(a) of the BC *Interpretation Act* - if a deadline falls on a day that a business is not open such deadline will be extended to the next day of regular business hours).
- Rio Tinto disagreed, arguing FKA had counsel and counsel could have filed the lien electronically on Saturday.
- Court found that the deadline to file was properly extended to Monday. The deadline would have been extended for FKA if filing in person at the Land Title Office without counsel and it would be inconsistent to not extend the deadline when filing with the assistance of counsel.

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*Frontier Kemper Constructors, Inc.
v. Rio Tinto Alcan Inc., 2022 BCSC 868*

Key Takeaways

- When considering if a lien is filed out of time, each of the triggering events (was the certificate of completion properly issued, was the head contract completed, abandoned or terminated, was the improvement completed or abandoned) could be subject to debate.
- Judges may err on the side of caution and refuse to discharge a lien on the basis that it was filed out of time without a full hearing on the merits of the case.

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What lands are lienable?

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Lienable Lands

- S. 2 of the BLA provides that a lien claimant who, in relation to an improvement, performs or provides work and/or supplies material can assert a lien against the land on which the improvement is located.
- **"Improvement"** is defined as including "anything made, constructed, erected, built, altered, repaired or added to, in, on or under land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under land".
- S. 16 of the BLA provides that if an owner enters into a single contract for improvements on more than one parcel of land, a lien claimant may choose to have the lien follow the form of the contract and be a lien against each of the parcels of land.

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*JVD Installations Inc. v. Skookum Creek Power Partnership,
2022 BCCA 81, leave to appeal to SCC refused,
2023 CanLII 8266 (SCC)*

Facts

- Lien claimant ("JVD") performed concrete and mechanical work for the powerhouse and substation components of a hydroelectric project.
- Powerhouse and substation were located on unregistered Crown lands and therefore lands were not lienable.
- The transmission lines for the hydroelectric project were located on registered lienable lands and JVD filed a lien over those lands even though it did not perform work in connection with the transmission lines.
- BSCS upheld the validity of the liens, holding the transmission lines, powerhouse and substation constituted a "single integrated improvement".
- Decision was appealed.

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*JVD Installations Inc. v. Skookum Creek Power Partnership,
2022 BCCA 81, leave to appeal to SCC refused,
2023 CanLII 8266 (SCC)*

Issue

- Could JVD lien lands on which they did not perform work?

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JVD Installations Inc. v. Skookum Creek Power Partnership,
2022 BCCA 81, leave to appeal to SCC refused,
2023 CanLII 8266 (SCC)

Key Findings

- BCCA considered prior cases where lien claimants filed liens on lands related to improvements but on which the lien claimants did not perform work:
 - *Kettle Valley Contractors Ltd. v. Cariboo Paving Ltd.* (1986), 26 DLR (4th) 422 (BCCA), valid lien against a road when the work performed (process gravel incorporated into the road) was undertaken at a pit three miles away - work was essential to and integrated into the road even though work occurred away from the liened road.
 - *Boomers Plumbing & Heating Ltd. v. Marogna Bros. Enterprises Ltd.*, (1988), 51 DLR (4th) 13 (BCCA), no lien against motel property for the cost of work done to install a sewage pump on City property that was meant to service the motel as well other purposes.

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JVD Installations Inc. v. Skookum Creek Power Partnership,
2022 BCCA 81, leave to appeal to SCC refused,
2023 CanLII 8266 (SCC)

Key Findings

- *Pedre Contractors Ltd. v. 2725312 Canada Inc and 360 Fibre Ltd.*, 2004 BCSC 1112, valid lien for work and services to install conduits both inside and outside the boundaries of the liened property as the work benefitted a single improvement.
- *Sandhill Development Ltd. v. Green Valley Developments Ltd.*, 2008 BCSC 1646, valid lien for all costs of work performed to construct roads even though only portion of roads were on liened property.

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JVD Installations Inc. v. Skookum Creek Power Partnership,
2022 BCCA 81, leave to appeal to SCC refused,
2023 CanLII 8266 (SCC)

Key Findings

- Only appropriate to permit a lien to be filed against property, where lien claimant did not perform work, if the improvement can be understood as a single improvement, to accord with the principle in BLA that land that receives benefit of improvement bears burden and risk of a lien claim.
- JVD did not perform work or services on the transmission lines therefore had no claim to a lien against those lands.
- Hydroelectric plant and the transmission lines were not a single improvement as they were: (1) functionally distinct; (2) physically remote from one another; and (3) constructed at different times (and by different constructors).

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*JVD Installations Inc. v. Skookum Creek Power Partnership,
2022 BCCA 81, leave to appeal to SCC refused,
2023 CanLII 8266 (SCC)*

Key Findings

- BCCA stated while not the case that a lien can never be filed in connection with work that are performed outside the boundaries of a parcel of property, there must be careful consideration where improvement itself extends beyond the boundaries of the property.
- BCCA overturned BCSC decision and held trial judge erred in upholding the lien claims.
- On February 9, 2023, the application for leave to appeal to the SCC was dismissed with costs.

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*JVD Installations Inc. v. Skookum Creek Power Partnership,
2022 BCCA 81, leave to appeal to SCC refused,
2023 CanLII 8266 (SCC)*

Key Takeaways

- Lien can be asserted over land where the claimants did not perform work so long as the work is for a single improvement that has benefited the land over which the lien is claimed.
- Lien claimants considering what property to lien should carefully consider the scope of the work they performed prior to filing their claim.
- If work performed is not connected to the lien land by a single improvement, lien claim may be invalid.

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How can a lien be discharged?

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Discharging Liens By Paying Holdbacks

- S. 24 of the BLA allows for the discharge of a lien upon payment of sufficient security for the lien.
- S. 23 of the BLA allows for the discharge of a lien by paying into court the lesser of:
 - the total amount of the lien claims, or
 - the amount owing from the applicant to the person engaged by the applicant, provided that amount is at least equal to the holdback applicable to the contract or subcontract between them.

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Holdbacks

- S. 4 of the BLA provides that the person primarily liable on each contract/subcontract under which a lien may arise must retain a holdback equal to 10% of the greater of:
 - the value of the work or material as they are actually provided, and
 - the amount of any payment made on account of the contract or subcontract price.
- S. 10 of the BLA provides that the holdback funds constitute a trust fund for the benefit of persons engaged in connection with the improvement by that contractor or subcontractor, and the contractor or subcontractor is the trustee of the fund.

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Metro-Can Construction (PE) Ltd. v. Escobar et al., 2022 BCSC 1042

Facts

- Owner of a property entered into an agreement with a general contractor ("**Metro-Can**") for contracting services for a strata development.
- Metro-Can and Jarguet Concrete General Labour Ltd. ("**Jarguet**") entered into a subcontract to provide materials and labour for concrete formwork and associated works for the project.
- Liens totaling \$541,433.99 were filed and Metro-Can asserted they were filed by subcontractors or material suppliers under Jarguet.
- Metro-Can applied to discharge the liens pursuant to s. 23 on payment of the 10% holdback owing to Jarguet, which Metro-Can said totaled \$309,043.52, and not total amount of liens.
- One of the lien claimants ("**Madness Forming**") argued that the evidence was insufficient to establish that the holdback totaled \$309,043.52.

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*Metro-Can Construction (PE) Ltd.
v. Escobar et al., 2022 BCSC 1042*

Issue

- Was the evidentiary record sufficient to discharge the lien pursuant to s. 23 payment of the holdback?

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*Metro-Can Construction (PE) Ltd.
v. Escobar et al., 2022 BCSC 1042*

Key Findings

- Madness Forming argued evidentiary issues with Metro-Can's application, including that the affidavits in support, in part:
 - lacked evidence that all of the lien claimants were engaged under Jarguet;
 - included discrepancies as to the value of the work and material performed by the subcontractors under Jarguet and in turn the value of the work provided by Jarguet to Metro-Can; and
 - was uncertain as to whether work paid was within Jarguet's scope of work.

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*Metro-Can Construction (PE) Ltd.
v. Escobar et al., 2022 BCSC 1042*

Key Findings

- Court agreed with Madness Forming that evidence did not establish the holdback amount Metro-Can proposed to pay pursuant to s. 23 was attributable to the work performed by Jarguet.
- Court could not decide application on the basis of the evidentiary record but Metro-Can was given leave to re-set the hearing after obtaining better evidence.

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Metro-Can Construction (PE) Ltd. v. Escobar et al., 2022 BCSC 1042

Key Takeaways

- Detailed and accurate record keeping of trades on site and accounting is key.
- Courts will be approach discharge of liens with caution.
- Applicants must ensure application is properly supported by appropriate affidavit evidence.

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How to properly enforce a lien?

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Enforcing a Lien

- S. 33(1) of the BLA provides that a lien claimant must commence an action in the BC Supreme Court within 1 year of filing of the lien against title and register on title a certificate of pending litigation.
- In that action to enforce the lien, owners of the property remain necessary parties, as the action is enforcing a claim against their property.

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Trans Canada Trenchless Ltd. v. Targa Contracting (2013) Ltd., 2022 BCSC 438

Facts

- Subcontractor (“**Trans Canada**”) failed to name owner as a party to action to enforce a lien claim.
- Trans Canada also failed to include language seeking to enforce its lien in the Notice of Civil Claim required by s. 33(1) of the BLA.
- BCSC allowed lien enforcement action to proceed and for Trans Canada to add owner as a party and amend its claim to expressly include a claim to enforce the lien, despite the expired one year limitation period.
- BCSC held that while there was no discretion to cure its failure to strictly comply with s. 33(1) of the BLA it would be just and convenient to allow Trans Canada to add the owner and amend the pleadings.
- Decision was appealed.

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Trans Canada Trenchless Ltd. v. Targa Contracting (2013) Ltd., 2022 BCSC 438

Issue

- Will failure to strictly comply with the BLA to name the owner in a lien enforcement action defeat the lien?

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Trans Canada Trenchless Ltd. v. Targa Contracting (2013) Ltd., 2022 BCSC 438

Key Findings

- Court confirmed a claim in lien remains a *claim in rem* and owner of the land against which lien asserted is a necessary party to enforce a claim of lien, even if there is no contractual relationship with lien claimant.
- Court held that failure to file in accordance with s. 33 of the BLA was non-compliance, regardless of intention and if a party does not comply by commencing an action to enforce the lien and filing a certificate of pending litigation, then the lien absolutely ceases to exist, and no action taken by the lien claimant can revive the extinguished claim.
- Court held that factors allowing for amendment of pleadings after expiry of a limitation period had no application as the underlying lien was extinguished and amending a Notice of Civil Claim cannot revive the extinguished lien.
- Court overturned master’s decision and held lien was extinguished.

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Trans Canada Trenchless Ltd. v. Targa Contracting (2013) Ltd., 2022 BCSC 438

Key Takeaways

- The builders lien is a creature of statute arising from the legislation (no builders lien rights at common law).
- Failure to strictly comply with the provisions of the BLA can be fatal to the lien claim.

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Are costs or damages recoverable if a lien is wrongfully filed?

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Improper Liens

- S. 19 of the BLA provides that if a wrongful lien is filed, then the person who files the lien is liable for costs and damages.
- S. 45 of the BLA provides instances when penalties may be imposed against a person who knowingly files a lien with a false statement.

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*Century Group GP Co. Ltd.
v. KRS Excavating Ltd., 2022 BCSC 357*

Facts

- \$2,085,088.82 lien filed by KRS Excavating Ltd. (“KRS”).
- Lien subsequently discharged from title pursuant to security letter agreement.
- Owner (“Century Group”) successfully applied for cancellation of lien on basis it was filed out of time.
- Century Group sought order that KRS pay \$124,860.52 in costs and damages and actual legal expenses in connection with the wrongfully filed lien, pursuant to s. 19 of the BLA.

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*Century Group GP Co. Ltd.
v. KRS Excavating Ltd., 2022 BCSC 357*

Issue

- What “costs and damages” can be recovered under s. 19 of the BLA?

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*Century Group GP Co. Ltd.
v. KRS Excavating Ltd., 2022 BCSC 357*

Key Findings

- Court agreed s. 19 of the BLA is intended to provide an important deterrent to lien claimants that fail to comply with lien requirements. The objective is to ensure owner whose land has been unreasonably encumbered by a wrongful lien is compensated by the lien claimant.
- Court determined an owner may seek 2 types of legal costs under s. 19 of the BLA:
 - (1) “Lien investigation/removal costs”:
Costs and actual legal fees incurred are recoverable.
 - (2) “Lien litigation costs”:
Costs incurred to thereafter challenge the validity of a lien (e.g., establish whether it was wrongfully filed) are recoverable but only tariff-based costs.

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*Century Group GP Co. Ltd.
v. KRS Excavating Ltd., 2022 BCSC 357*

Key Findings

- Century Group awarded:
 - “Reasonable legal fees” for lien investigation/removal costs for amount to be agreed to by the parties or further assessed by the courts;
 - \$28,844.25 for the security financing costs; and
 - Lien litigation costs on the tariff basis.

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*Century Group GP Co. Ltd.
v. KRS Excavating Ltd., 2022 BCSC 357*

Key Takeaways

- Owners can seek dollar for dollar recovery of all costs incurred to discharge a lien that later proved to be wrongfully filed.
- Owners can only seek a portion of the costs incurred to establish that lien was wrongfully filed.
- Owner should consider any other available contractual remedies (such as a general contractor’s indemnity obligation) to deal with the discharge and dispute.
- Owners should also consider whether any support to make a claim against claimant for penalties (e.g., s. 45 of the BLA).

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**PART 2:
Contract Requirements**

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Outline

- ❑ **Notice Provisions**
 - ❑ *Conwest Contracting Ltd. v. Crown and Mountain Creations Ltd.*, 2021 BCSC 2116
- ❑ **Contract Formalities – Dispute Resolution**
 - ❑ *H.R. Doornekamp Construction Ltd. v. Canada (Attorney General)*, 2022 ONSC 2247
- ❑ **Pay-when-paid clauses**
 - ❑ *Canadian Pressure Testing Technologies Ltd. v. EllisDon Industrial Inc.*, 2022 ABKB 649

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Notice Provisions

- Notice provisions will vary depending on the contract
- Important to know what the notice provisions are and to follow them – particularly when seeking to advance a claim or reserve rights to bring a claim.

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Conwest Contracting Ltd. v. Crown and Mountain Creations Ltd., 2021 BCSC 2116

- This case considered claim by the contractor (Conwest Contracting Ltd.) for extras and progress payments owing under a construction contract for excavation and shoring work performed for a residential construction project.
- Conwest ceased performing the work after the Owner failed to make two progress payment and refused to approve work orders for the extras.
- Conwest sought judgment of \$598,640.82 (which included the claims for extras as well as unpaid holdback).
- The Owner counterclaimed for damages of \$750,148.88.

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Conwest Contracting Ltd. v. Crown and Mountain Creations Ltd., 2021 BCSC 2116

- There were a number of issues that made this contractual dispute difficult:
 - there were multiple provisions in the contract that the parties failed to follow;
 - despite this, each party sought to rely on various contractual provisions; and
 - Conwest argued that extrinsic evidence concerning the circumstances the contract was entered into should also be taken into account.

Conwest Contracting Ltd. v. Crown and Mountain Creations Ltd., 2021 BCSC 2116

- The Court granted Conwest's claim in contract and on a *quantum meruit* basis, finding that the contract did allow for extra work to be completed and paid for. Conwest was awarded \$598,640.82.
- Key to this finding was that, although proper notice of the delay and extras were not given under the Contract terms, there was supporting documents for the delay and extras.
- The Court also found that the Owner lawfully terminated the contract and allowed the counterclaim for damages in the amount of \$202,946.59.

KEY TAKEAWAYS



- Reminders for contractors:
 - Strictly follow the contract terms – especially notice provisions
 - Failure for an owner to make payment does not permit an abandonment of the project
- Reminders for owners:
 - Strictly follow the contract terms
 - Be clear on the scope of work

Dispute Resolution

- Dispute Resolution clauses typically contemplate:
 - Negotiation
 - Mediation
 - Arbitration (or civil action)
- Note that the Dispute Resolution provisions will impact both how a claim must be raised, and the forum within which a claim must be raised.

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H.R. Doornekamp Construction Ltd. v. Canada (Attorney General) 2022 ONSC 2247

- Dispute resolution clause in a contract for demolition and replacement of the concrete face of a canal lock was at issue.
- Certain of the work was to be paid for on a unit-price basis based on the units of concrete actually demolished and supplied.
- The contractor said that the owner failed to pay it for work performed.

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H.R. Doornekamp Construction Ltd. v. Canada (Attorney General) 2022 ONSC 2247

- The contractor commenced an action seeking payment of the additional work performed.
- The owner sought to have the action summarily dismissed on the basis that the contractor failed to follow the dispute resolution provisions of the construction contract.
- The motion judge found that there was a genuine issue for trial. This decision was appealed.

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H.R. Doornekamp Construction Ltd. v. Canada (Attorney General) 2022 ONSC 2247

- The appeal was dismissed.
- Genuine issue for trial:
 - Was the obligation to consult and co-operate satisfied such that the Dispute Resolution provisions properly engaged or did the failure of the contractor to deliver a notice of dispute extinguish the ability to bring an action?

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KEY TAKEAWAYS



- Ensure you are aware of how disputes are to be addressed – and follow the contract procedures.
- Consider how the dispute provisions may impact forum.

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Pay-When-Paid Clauses

- Tool to protect against non-payment.
 - Contractors, subcontractors, sub-subcontractors.
 - Payment must flow top down in contractual pyramid.
- *E.g.*, "Contractor shall pay Subcontractor progress payments, with such payments due five (5) business days after Contractor receives payment from Owner".
- Contentious – substantially limited or outlawed in U.K. and U.S.
- Conflicting appellate authority in Canada.

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*Canadian Pressure Testing Technologies Ltd.
v. EllisDon Industrial Inc., 2022 ABKB 649*

Facts:

- Petrochemical plant construction.
- EllisDon (the "General Contractor" retains subcontractor Canadian Pressure Testing (the "Subcontractor").
- Subcontract pay-when-paid clause:

"Contractor shall pay to Subcontractor monthly progress payments... **and such payments shall become due and payable no later than five (5) business days after Contractor receives payment pursuant to... the Prime Contract from the Owner in respect of such Services...**"

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*Canadian Pressure Testing Technologies Ltd.
v. EllisDon Industrial Inc., 2022 ABKB 649*

Issue:

- Subcontractor invoices Contractor on completion but Contractor refuses payment.
- Owner has not paid Contractor.
- Does pay-when-paid clause permit Contractor to refuse payment?

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*Canadian Pressure Testing Technologies Ltd.
v. EllisDon Industrial Inc., 2022 ABKB 649*

Decision:

- Court ordered Contractor to pay.
- Subcontract dealt with timing of payment, not condition.
- Pay-**no later than**-clause vs. pay-when paid clause.
- Language is key:
 - Timing, e.g., contractor will pay **no later than** 5 days.
 - Condition, e.g., contractor will pay **if** owner has paid contractor.
- Aggravating factor: Contractor did unauthorized work causing owner non-payment.

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Canadian Pressure Testing Technologies Ltd. v. EllisDon Industrial Inc., 2022 ABKB 649

Significance of Decision:

- Appellate authority in Canada sways in favour of Nova Scotia > Ontario.
- Court held: *Arnoldin Construction & Forms Ltd v Alta Surety Company*, 1995 NSCA 16 > *Timbro Developments Ltd v Grimsby Diesel Motors Inc.*, (1988) 32 CLR 32 (Ont CA).
- *Arnoldin* is the law to apply.
- *Timbro* has little precedential value now.

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KEY TAKEAWAYS



- > Draft simple.
- > *E.g.*, contractor will pay subcontractor **if** owner pays contractor.
- > Don't add language re: timing.
- > Clean hands – don't cause the nonpayment.
- > Future: prompt payment?

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**PART 3:
Construction Defects**

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Outline

- Developer liability for construction defects**
- Involvement in construction is not determinative of liability**
- Expanded scope of liability for developers**
- How can developers protect themselves**

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Condominium Corporation No. 0522151 (Somerset Condominium) v. JV Somerset Development Inc., 2022 ABCA 193

Facts:

- JV Somerset (the “**Developer**”) developed condominium in Edmonton, AB. Not involved in construction.
- 2004-2005: Developer sold units to owners (the “**Owners**”).
- 2012: Owners discover significant defects, e.g., water-ingress, load-bearing compromised in balconies.
- 2014: Owners sue Developer in negligence and breach of fiduciary duty.

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Condominium Corporation No. 0522151 (Somerset Condominium) v. JV Somerset Development Inc., 2022 ABCA 193

Issue:

- Developer argues no involvement = no duty.
- Can a “hands-off” developer owe a duty of care to future buyers?

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Condominium Corporation No. 0522151 (Somerset Condominium) v. JV Somerset Development Inc., 2022 ABCA 193

Decision:

- Lower court agrees with Developer.
 - Developer who is not actively engaged in construction = no direct or vicarious liability for dangerous defects.
- Alberta Court of Appeal reverses and remits for trial.
- It is **possible** for Developer to be liable in negligence to subsequent purchasers for dangerous defects.
- Involvement in construction is not determinative.

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Condominium Corporation No. 0522151 (Somerset Condominium) v. JV Somerset Development Inc., 2022 ABCA 193

Significance of Decision:

- *Winnipeg Condominium Corporation No 36 v. Bird Construction Co.*, [1995] 1 S.C.R. 85 – general contractor can be liable in negligence to subsequent purchase for dangerous defects.
- Court applied rationale in *Winnipeg Condo* to developer even if developer was hands-off.
- This issue required a full trial for determination.

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KEY TAKEAWAYS



- Expansion of potential liability of developers to subsequent purchasers for dangerous defects
- Hiring practices – contractors and professionals.
- Contractual protection – flow down indemnity provisions and insurance.

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**PART 4:
Procurement**

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Outline

- ❑ **Blacklisting in Canada**
- ❑ ***FORCOMP Forestry Consulting Ltd. v. British Columbia, 2021 BCCA 465***
- ❑ **Best practices for drafting and procurement process**

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Blacklisting in Canada

- Practice of excluding a potential contract or opportunity.
- Began ~20 years ago re: mass suits by contractors against municipalities.
- Often used where potential bidder in tender process is suing owner/developer.
- "Lawsuit" clauses:
 - "The Owner reserves the right to reject any tenders of a company that, at the time of tendering, is engaged in a lawsuit against the City in relation to work similar to that being tendered."

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*FORCOMP Forestry Consulting Ltd.
v. British Columbia, 2021 BCCA 465*

Facts:

- 1993-2002: Ministry of Forests of B.C. (the "Ministry") hired FORCOMP ("FORCOMP") for forestry data analysis.
- 2002-onward: Ministry stopped awarding contracts to FORCOMP.
- FORCOMP alleged Ministry blacklisted them as reprisal for identifying errors by Ministry.

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*FORCOMP Forestry Consulting Ltd.
v. British Columbia, 2021 BCCA 465*

Issue:

- FORCOMP sued Province and Ministry employees:
 - Misfeasance in public office;
 - Conspiracy;
 - Breach of s. 2(b) of the *Charter* (freedom of expression); and
 - Blacklisting.
- Is blacklisting a cause of action?

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*FORCOMP Forestry Consulting Ltd.
v. British Columbia, 2021 BCCA 465*

Decision:

- Lower court agrees with Province and strikes all claims.
 - Pleadings did not meet the low bar – failed to disclose a reasonable claim, frivolous, abuse of process.
- B.C. Court of Appeal reverses and remits all claims for trial except blacklisting.
- Misfeasance in public office, conspiracy, and breach of the *Charter* were reasonably stated claims.
- Blacklisting is not a cause of action in Canada or common law world.

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*FORCOMP Forestry Consulting Ltd.
v. British Columbia, 2021 BCCA 465*

Significance of Decision:

- FORCOMP's appeal to the Supreme Court of Canada was denied as of June 30, 2022.
- Blacklisting is not a basis on which to sue in Canada.
- Court expressly refused to recognize "incremental" development of law to permit blacklisting claims.
- Closes the door to lawsuits for blacklisting in Canada, for now.

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Key Takeaways

- Blacklisting is not a "tort claim".
- This is important to municipalities, post-secondary institutions, and owners and developers generally.
- Owners can discriminate based on "best value" contracting – e.g., price, past performance, etc.
- Owners cannot discriminate for wrong reasons – e.g., race, sex, etc.
- Softer approaches – use of evaluation criteria, "best value" contracting, and allow more flexibility overall to Owner in tendering.
 - <https://www.cwilson.com/common-sense-prevails-in-evaluation-and-award/>
 - See Continental Steel Ltd. v. Mierau Contractors, 2007 BCCA 292

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**PART 5:
Bonds**



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Bonds

- Most common forms of bonds in context of construction projects are:
 - Performance Bonds
 - Labour and Material Payment Bonds
 - Lien Bonds

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*Urban Mechanical Contracting Ltd.
v. Zurich, 2022 ONCA 589*

- This case considered whether a surety could rescind a performance bond and payment bond on the basis of fraudulent misrepresentation and collusion.
- St. Michael's Hospital had entered into a public-private redevelopment project with Infrastructure Ontario to build a 17 storey patient care tower. The contract for construction was awarded to 2442931 Ontario Inc. ("Project Co.").
- Project Co was a wholly owned subsidiary of Bondfield Construction Company Limited, which was made the general contractor.
- Project Co. was financed by a syndicate of lenders.
- The terms of the financing and the construction contract required Project Co. to obtain and maintain a Performance Bond and a Labour and Material Payment Bond.
- Zurich Insurance Company provided the bonds.

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*Urban Mechanical Contracting Ltd.
v. Zurich, 2022 ONCA 589*

- After Zurich provided the bonds, it became aware of email communications between representatives of St. Michael's Hospital and Bondfield that appeared to disclose fraudulent misrepresentations and collusion to have the contract awarded to Bondfield.
- Zurich said that if it had none of the fraud it would not have issued the bonds and sought rescission of the bonds by way of summary application.
- The issue before the court was whether as a matter of law, a bond issuer could rescind a bond on the basis of fraudulent misrepresentations and collusion where doing so would affect the rights of innocent third parties (in this case, the lender behind the bonds – the Bank of Montreal).
- The lower court found that Zurich whether or not Zurich was entitled to rescind its bond on the basis of fraudulent misrepresentation should be determined at trial on a full consideration of the evidence and not disposed of by way of summary application.

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*Urban Mechanical Contracting Ltd.
v. Zurich, 2022 ONCA 589*

- The lower court decision was appealed.
- The appeal was dismissed on the Ontario Court of Appeal, which found that the rights of third parties may, but are not always, a bar to rescission.
- This leaves open the possibility that a bond may be subject to rescission in the case of fraud, even where the rights of innocent third parties are engaged.

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KEY TAKEAWAYS



- implications to innocent third parties?
- need for a 'standard clause' in context of bonding?

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PART 6:
Prompt Payment Legislation in British Columbia: *Time to Get Ready*

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Outline

- ❑ Prompt Payment Regimes in Canada
- ❑ Prompt Payment in British Columbia?
- ❑ Cases
- ❑ Observations from Other Jurisdictions

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Prompt Payment Legislation in Canada

- Ontario: [Construction Act, RSO 1990 c C.30](#)
- Alberta: [Prompt Payment and Construction Lien Act, RSA 2000, c P-26.4](#)
- Saskatchewan: [The Builders' Lien \(Prompt Payment\) Amendment Act, 2019, SS 2019, c 2](#)
- Federal: [Federal Prompt Payment for Construction Work Act, SC 2019, c 29](#)
- Quebec, New Brunswick, and Nova Scotia: all are in the process of implementing their own prompt payment legislation.

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Prompt Payment Regime in Ontario

- An owner must pay a contractor within 28 days after receipt of a "proper invoice".
- If an owner does not pay all or part of the invoice, it must give the contractor a "notice of non-payment" within 14 days.
- A contractor must either pay its subcontractors within seven days of receipt of payment from the owner, or issue its own "notice of non-payment".

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Prompt Payment Regime in Ontario

- If a dispute arises, such as non-payment or valuation of services or materials provided, the matter must be referred to adjudication.
- The adjudicator's determination is made within 30 days of the adjudicator receiving all documents from the parties and is binding until a determination is made by a court or an arbitration. An adjudicator's decision can also be set aside by an application for judicial review on limited grounds.
- Parties cannot contract out of the Ontario legislation, meaning that the legislation is binding on parties regardless of whether they would prefer to follow it.

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Prompt Payment Legislation in British Columbia

- British Columbia has not yet enacted prompt payment legislation.
- However, on May 28, 2019, Bill M-223 – 2019: *Builders Lien (Prompt Payment) Amendment Act*, 2019 was introduced in the legislature. While it was ultimately not passed it provided for a prompt payment regime similar to that found in Ontario.
- On August 11, 2022, the Select Standing Committee on Finance and Government Services recommended to the B.C. Legislature as part of its Report on the Budget 2023 Consultation that the Government of British Columbia "prioritize the enactment of prompt payment legislation that is inclusive of lien reform and adjudication", citing submissions from the B.C. Construction Association that highlighted the implementation of prompt payment legislation in Ontario.
- Given this recommendation, it is expected B.C. will undertake consultation with the construction industry regarding potential draft legislation in 2023.

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SOTA Dental Studio Inc. v Andrid Group Ltd., 2022 ONSC 2254

Facts:

- SOTA (the "Owner") retained Andrid Group Ltd. (the "Contractor") as its contractor for the construction of a dental clinic.
- The Contractor invoiced the Owner for its work and the Owner did not dispute the invoices within 14 days. Pursuant to Ontario's prompt payment legislation (the "Act"), the invoices then became due and payable.
- The Contractor invoked adjudication under the prompt payment provisions of the Act. After a hearing, the adjudicator ordered the Owner to pay the Contractor \$38,454.55 for the work performed (the "Order").
- The Owner did not pay the Order as required.
- The Owner sought and was granted leave to bring an application for judicial review of the adjudicator's determination but not seek a "stay" (i.e. a pause of the enforceability) of the adjudicator's decision pending the outcome of judicial review.

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*SOTA Dental Studio Inc. v Andrid Group Ltd.,
2022 ONSC 2254*

Issue:

- The Court addressed the Owner’s failure to apply for a stay of the Order, and considered whether this failure was fatal to its application for judicial review.

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*SOTA Dental Studio Inc. v Andrid Group Ltd.,
2022 ONSC 2254*

Decision:

- The Court dismissed the application for judicial review as a result of the Owner’s failure to apply for a stay of the Order.
- In doing so, the Court enunciated the following principles:
 - prompt payment is integral to the Act and a failure to pay an order in accordance with the prompt payment requirements of the Act constitutes grounds for refusing leave for judicial review;
 - Where leave is granted, the applicant must obtain a stay of the adjudicator’s order, failing which the court may dismiss the application for judicial review.
 - If there are reasons to support a stay (and therefore not pay the order pending judicial review) this must be established on proper evidence on an application for a stay.

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*SOTA Dental Studio Inc. v Andrid Group Ltd.,
2022 ONSC 2254*

Significance of Decision:

- In Ontario, the courts have strictly enforced the requirements of the Act so as to avoid the possibility of parties avoiding payment of an invoice by applying for judicial review.
- If a party does not want to pay an adjudicator’s order while it is the subject of judicial review proceedings, they must apply to the court for an order staying the adjudicator’s order.
- If a party cannot justify a stay of the order (or does not apply for a stay), they will have to pay the order and proceed with judicial review (or otherwise risk having their application for judicial review dismissed). If that party is subsequently successful on judicial review, they will have to take steps to recover funds that should not have been paid out in the first place.

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*Pasqualino v MGW-Homes Design Inc.,
ONSC 5632*

Facts:

- Pasqualino (the "Owner") failed to pay MGW-Homes Design Inc. (the "Contractor") for its work on the Owner's construction project (the "Project").
- The Contractor commenced adjudication against the Owner in accordance with the prompt payment provisions of Ontario's *Construction Act* (the "Act"). The Adjudicator ordered the Owner to pay the Contractor \$119,314 for the Contractor's unpaid invoices.
- The Owner sought leave to bring an application for judicial review, claiming that because the contract between it and the Contractor had been terminated or abandoned before the Contractor commenced the adjudication, the contract had "ceased to exist" and therefore could not be subject to a construction dispute adjudication proceeding under the Act.
- The Owner also argued that the fact there was an existing lien action at the time of the adjudication conflicted with the adjudication remedy such as that it should not be permitted.

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*Pasqualino v MGW-Homes Design Inc.,
ONSC 5632*

Issues:

- Did the adjudicator lack jurisdiction to hear the dispute between the parties as a result of the contract being terminated or abandoned?
- Did the existing lien action prevent the adjudication from proceeding?

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*Pasqualino v MGW-Homes Design Inc.,
ONSC 5632*

Decision:

- The Court found that there was no merit to the argument that the adjudicator did not have jurisdiction to hear the dispute because the contract had been terminated or abandoned.
- The Court stated that "whether the construction contract was abandoned or terminated [...] would not have made the construction contract "cease to exist".
- The Court found that if a party is going to challenge an adjudicator's jurisdiction, that it must raise that issue before the adjudicator, and not after the adjudicator has made their decision.

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*Pasqualino v MGW-Homes Design Inc.,
ONSC 5632*

Decision:

- There was no conflict between the existing lien action and the adjudication. The Act expressly permits an adjudication to proceed at the same time as a lien claim.
- In the lien action the Contractor's lien was bonded off with security being posted into court, but there was no determination on the validity or quantum of the lien claim, and the Owner had a right to seek a reduction of the amount for security posted for the lien.
- The owner was not "paying twice" by posting security and paying the adjudicator's decision. All parties rights were preserved with respect to the lien claim.

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*Pasqualino v MGW-Homes Design Inc.,
ONSC 5632*

Significance of Decision:

- If a party to an adjudication is going to challenge the jurisdiction of the adjudicator they must do so at the hearing, and not after on judicial review.
- The fact that a construction contract has been terminated or abandoned does not mean that a dispute cannot proceed by way of adjudication.
- Adjudication and a lien action may operate concurrently, which could result in a contractor "paying twice" in the short term if they have to pay an adjudicator's order and post security for a claim of lien.

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*Okkin Construction Inc. v. Apostolopoulos,
2022 ONSC 6367*

Facts:

- Apostolopoulos (the "**Owner**") retained the Bond Group Ottawa 2018 (the "**Contractor**") to construct an improvement on the Owner's home (the "**Project**"). The Contractor retained Okkin Construction Inc. (the "**Subcontractor**") to perform part of the work.
- A dispute arose after the Project went over budget as a result of the fluctuation in the price of structural steel that was needed for the Project, and the Owner refused to pay for the Project work and terminated the contract with the Contractor.

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Okkin Construction Inc. v. Apostolopoulos,
2022 ONSC 6367

Facts:

- The Contractor commenced an adjudication and registered a lien in the amount of \$402,000, in accordance with the prompt payment provisions of Ontario's Construction Act (the "**Act**") the Subcontractor also registered a lien for \$196,000.
- As a result of the adjudication the Contractor obtained an order that the Owner was obligated to pay the Contractor \$207,000 (the "**Order**").
- The Owner did not seek a stay of the Order or seek to have it set aside on judicial review. As a result, the Order was registered with the Court and was enforceable as an order of the Court.

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Okkin Construction Inc. v. Apostolopoulos,
2022 ONSC 6367

Issue:

- The Owner brought a motion for directions on how to proceed with the Subcontractor's lien.
- The Owner's main concern was that the Order required that the holdback amounts reserved for the Contractor's Subcontractors be paid despite the Subcontractor having placed a lien on title, and the Owner was obligated to retain holdback funds for that lien.
- If the holdback funds were paid out to satisfy the Order, then the Owner would have to pay the holdback twice or otherwise be in breach of the holdback provisions of the Act.

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Okkin Construction Inc. v. Apostolopoulos,
2022 ONSC 6367

Decision:

- Following the *SOTA Dental v Andrid Group* and *Pasqualino v MGW-Homes Design*, the Court found that the Act required that an adjudicator's order must be paid even if it means that someone will have to "pay twice" in the short term.

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**Okkin Construction Inc. v. Apostolopoulos,
2022 ONSC 6367**

Significance of Decision:

- If an adjudicator's decision may result in an owner being required to pay out holdback funds then this issue should be raised before the adjudicator, and the owner should consider seeking an order from the adjudicator that it not be required to pay the holdback portion until all liens that may be claimed against the holdback have expired or been satisfied or discharged.
- If an owner does not seek such an order, it could be in a position of paying twice for the same work. Even if this overpayment is only temporary, it could create significant budgetary issues for an owner. The owner would also have to seek recovery of the overpayment, which could be problematic if the payee has become insolvent.

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Observations from Other Jurisdictions

Inefficiencies in the dispute process

- See *Demikon Construction Ltd. v Gueff Enterprises Inc.*, ODACC Case No.: 5112
 - Involved a dispute over a \$10,963 invoice, and resulted in a 32 page decision of the adjudicator.
 - The parties filed voluminous evidence, including expert reports.
 - The Adjudicator made an order that the owner pay the contractor's invoices totaling \$10,963, plus court ordered interest, with the parties bearing their own legal costs.

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Observations from Other Jurisdictions

Choosing a preferred process

- In some prompt payment regimes parties to a dispute can elect to have their dispute resolved by way of adjudication or court. The jurisdiction of a dispute is set by the party that commences the proceedings. This could have the effect of increasing litigation as parties to a dispute will be incentivized to commence a proceeding before the opposing party in an effort to obtain their preferred dispute resolution forum.

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Observations from Other Jurisdictions

Being ready to respond to disputes

- Alberta's prompt payment legislation sets strict and short timelines for the dispute resolution process. After filing for adjudication, the parties have four days to appoint an arbitrator. If they fail to do so one will be appointed for them. After the adjudicator is appointed the claimant has five days to deliver its submissions. The respondent must deliver its submissions twelve days later. The adjudicator will make a determination thirty days later.
- Given these issues, parties will need a legal team retained and prepared to engage in the dispute resolution process at a moment's notice, or otherwise risk missing critical deadlines.

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Observations from Other Jurisdictions

Stay of Proceedings

- In Ontario, an applicant for judicial review must either pay the award set out in the adjudication order or apply to court for a stay of that order pending the outcome of judicial review.
- If the applicant cannot satisfy the test for obtaining a stay, then it will have to pay the amount set out in the order. If the adjudicator's order is overturned on judicial review, the applicant will then have to pursue repayment of a monetary award that it already paid. This could create a significant issue if the respondent has spent those funds and has become impecunious or insolvent.
- The importance of obtaining a stay of a monetary award was highlighted in the SOTA case, in which the Court dismissed an application for judicial review without a hearing on the merits of the case due to the applicant's failure to either pay the order or obtain a stay of the order.

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Observations from Other Jurisdictions

Proper Invoices

- Parties are only obligated to meet the deadlines for prompt payment if they receive a "proper invoice". In Alberta, to meet the definition of a "proper invoice" an invoice must include (among other things) information on the payment terms as broken down for the work or materials provided, and a statement indicating that the invoice is intended to be a proper invoice.
- If contractors and subcontractors want to take advantage of the benefits of prompt payment legislation it is critical that their invoices meet all of the requirements of a "proper invoice".

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Observations from Other Jurisdictions

Disputes big and small

- If British Columbia follows other jurisdictions, prompt payment legislation would likely apply to everyone, from large developers and contractors to individual homeowners, and regardless of the amount of money involved in a dispute.
- Homeowners overseeing home renovations will need to be alert to the strict and short deadlines set out in the prompt payment legislation in order to satisfy payment obligations and enforce their rights to dispute a "proper invoice". Failure to meet these deadlines could have significant adverse consequences for homeowners.
- In large construction projects where disputes can be very complex and for large sums of money, it will be problematic to have such matters dealt with in a summary procedure of adjudication which results in a decision in less than two months without the processes and protections normally found in arbitration and court proceedings.

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Observations from Other Jurisdictions

Retroactive Effect

- Ontario and Alberta's prompt payment legislation does not apply to contracts or subcontracts that were entered into prior to the respective legislation coming into force. However, once in force the Federal prompt payment legislation will retroactively apply to existing contracts, albeit on a deferred basis for a period of one-year.
- If British Columbia follows the Federal legislation, rather than Ontario or Alberta, parties will need to be prepared to follow prompt payment legislation in respect of contracts and projects on a retroactive basis.

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Conclusion

- As British Columbia moves towards prompt payment legislation, stakeholders in the construction industry should closely consider the implications that the legislation will have on their contracts and projects.
- Prompt payment legislation will make significant changes to how construction disputes are dealt with in British Columbia – Time to get ready.

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Additional Resources

- [What Prompt Payment Legislation Will Mean for Contracts and Projects in B.C. \(cwilson.com\)](#)
- [Prompt Payment Legislation in Canada – Update \(cwilson.com\)](#)
- [Prompt Payment Legislation in British Columbia: Long Overdue? \(cwilson.com\)](#)

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PART 7:
Centurion Apartment Properties Limited Partnership v. Loco Investments Inc., 2022 BCSC 2273

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Centurion Apartment Properties Limited Partnership v. Loco Investments Inc., 2022 BCSC 2273

- Design build contractor (with same directing mind as legal owner) entered into contract with structural consultants limiting liability of consultants.
- Legal owner then entered into contract with design build contractor allocating risk to design build contractor as responsible for consultants.
- Legal and current beneficial owners tried to assert claims in negligent design against consultants.
- Only legal owner had standing, not beneficial owner. However, due to allocations of risk among parties in the contracts □ no relationship of proximity between legal owner and consultants to establish duty of care.
- If parties allocate risk in their respective contractual arrangements, they cannot later circumvent such contracts to recover losses by pursuing their claims in tort.

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Questions?


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These materials are necessarily of a general nature and do not take into consideration any specific matter, client or fact pattern.


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Biographies



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 Roy Nieuwenburg has been practicing with Clark Wilson LLP since 1980 and is co-chair of the Infrastructure, Construction and Procurement Practice Group. He has a wealth of experience with construction projects, tendering, RFPs, project management and project delivery. Roy has done extensive work in the construction and procurement field. Roy was appointed King's Counsel (KC) in 2016 and has been recognized by Best Lawyers in Canada for Construction Law and by Lexpert as one of Canada's Leading Infrastructure Lawyers.




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 Satinder Sidhu is a Partner and Co-Chair of the firm's Infrastructure, Construction & Procurement Practice. Satinder advises her clients on a wide range of complex construction related services including construction contracts, builders' lien claims, contractual disputes, construction delay and deficiency claims, and insurance coverage. Satinder has provided legal services on a variety of projects in B.C. and Alberta, representing owners, general contractors, design professionals, sub-contractors, material suppliers, and insurers. Satinder is strategic and pragmatic in her approach to construction contracts and claims and has recognized for her expertise in Best Lawyers in Canada.


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Biographies



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 Scott Lamb is a partner at the law firm of Clark Wilson and a senior member of Infrastructure, Procurement and Construction practice group. He is also the Co-Chair of Clark Wilson's Higher Learning practice group. Scott is called to the Bar in Ontario and British Columbia. He has practiced in the area of construction law for over 25 years acting for clients throughout the construction chain: large owners (both institutional public sector and private sector clients), general contractors, specialized contractors, suppliers, architects, engineers and consultants. Scott's practice encompasses all aspects of contract drafting and negotiations, dispute resolution and litigation. He has appeared as counsel in cases at the trial and appellate level. Scott has been repeatedly recognized by Best Lawyers in Canada for public procurement and Doyle's Guide, Leading Construction Litigation Lawyers, 2021.



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 Rosalie Clark is a partner at Clark Wilson and a member of the Infrastructure, Construction & Procurement team, working closely with owners, consultants, contractors and suppliers both in BC and across North America. Her services include drafting and negotiating construction contracts and documents, as well as acting for clients in construction disputes, including disputes relating to tendering and procurement, builders' liens, and delays and deficiencies. Rosalie is an active and engaged member of the community, regularly volunteering her time and expertise to industry organizations, including Women in Infrastructure, the Advocates' Society's Construction Law practice group and the Young Lawyers practice group, as well as the Canadian Bar Association's Construction Law committees.

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Biographies

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 Dan Melnick acts for owners, developers, and contractors in matters such as builders liens, breach of contract claims, defect and negligence claims, and delay claims. He understands the impact that these claims have on construction projects and resolves disputes efficiently through negotiation, mediation or arbitration. Having appeared at all levels of court in British Columbia, Dan is also equipped to advance his clients' interests and claims through litigation when necessary.

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 Denny Chung is an associate of the firm's Infrastructure, Construction & Procurement Practice. Denny's practice focuses on litigation in relation to all manner of realization issues. He provides services in respect of contract disputes, builders' lien claims, delay claims, professional negligence and deficiency claims. He acts for owners, developers, contractors, and professionals. Denny has worked on matters involving biomass plants, universities, hospitals, commercial and residential developments, P3 projects, hydroelectric infrastructures and mega-dams. He has also provided insurance counselling advice in respect of course-of-construction coverage including specialized policies such as LEO-3 policies. Denny approaches every matter with a view toward the client's overall business objectives. He has been recognized by Best Lawyers' Ones To Watch in 2022 and 2023.

Kim Do Associate | 604 643 3901 | kdo@cwilson.com
 Kim Do is an associate at Clark Wilson. She acts for owners, contractors, consultants and suppliers in drafting construction contracts and in construction disputes, including payment issues and construction defects. Kim understands that when faced with conflict and risk, our clients are looking for timely, cost-effective, and practical solutions that protect their interests now and for the future. Understanding that even seemingly minor cases have a way of damaging relationships, tarnishing reputations and delaying work, wasting money, time and talent, Kim helps our clients overcome challenges with a systematic, practical and determined approach.

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