

Construction and Infrastructure

Through more than two decades of representing clients' interests in all areas of commercial litigation, Lenczner Slaght has regularly tackled the unique complexities of the construction sector. We've acted for various parties in construction-related disputes, including owners and developers, contractors and subcontractors, lenders and underwriters, and architecture and engineering firms. Our relevant litigation experience covers the spectrum of construction matters, from insurance claims, disputes relating to progress payments, holdbacks, and liens, and claims relating to delay and disruption, defects, omissions, and other performance issues.

The firm's construction-sector specialists are engaged by corporations and private companies, as well as by government ministries and agencies in public-private partnerships. We've provided litigation support on projects ranging from residential developments to multi-billion-dollar infrastructure projects – across Canada and internationally.

Construction-related expertise is vital for effective advocacy – that's a given. But what distinguishes Lenczner Slaght is our unmatched hearing and trial experience at all levels of the Canadian courts. We've proven our ability to take on the most complex legal challenges of the construction business, building consistently solid cases and achieving the best outcomes for our clients.

RECOGNITION

- Lexpert Special Edition: Canada's Leading Infrastructure Lawyers (2023)
- Lexpert Special Edition: Canada's Leading Infrastructure Lawyers (2020-2021)
- Chambers Canada (2020-2024)
Construction; Employment & Labour: Non-Unionised Employees; Healthcare: Contentious (Nationwide – Canada)
- Lexpert Special Edition: Canada's Leading Infrastructure Lawyers (2021)
- Lexpert Special Edition: Canada's Leading Infrastructure Lawyers (2020-2023)
- Best Lawyers in Canada (2018-2024)
Construction Law, Corporate Commercial Litigation, Health Care Law, Medical Negligence, Real Estate Law
- Best Lawyers in Canada (2013-2024)
Construction Law, Corporate & Commercial Litigation, Health Care Law, Insurance, Medical Negligence, Real Estate Law

SELECT CASES

- **NORR Limited v Encon Group et al** – Counsel to an architecture firm in a coverage dispute with its insurer regarding a large scale construction project.
- **Confidential Arbitration** – Counsel to a general contractor in an arbitration relating to a major Ontario transit project.
- **Crosslinx Transit Solutions Constructors v Form & Build Supply (Toronto) Inc** – Counsel to Crosslinx Transit Solutions Constructors in a successful motion to declare a lien from a sub-subcontractor expired. The decision was the first to consider and apply the transition provisions in the *Construction Act*, R.S.O. 1990, c. C.30 to the time limit to register a lien.
- **Cameron Stephens Mortgage Capital Ltd v 1091369 Ontario Inc** – Counsel to a construction lender in an application to appoint a receiver.
- **Crosslinx v Metrolinx** – Counsel to Crosslinx Transit Solutions Constructors in an application against Metrolinx and Ontario Infrastructure (HMQE) in relation to HMQE's failure to declare an emergency as a result of the COVID-19 pandemic. Crosslinx is a design and construction consortium established to deliver and maintain the Eglinton Crosstown LRT, the second largest Canadian transit infrastructure project. We successfully resisted a motion to stay and succeeded entirely on the application to obtain contractual relief due to the pandemic. This is notable as it may have broader implications for other P3 Projects across the province of Ontario.
- **Zurich Insurance Company Ltd v 2442931 Ontario Inc, Bondfield Construction Company Limited, John Aquino, Vasos Georgiou and Unity Health Toronto** – Counsel to Zurich in an action to rescind surety bonds worth nearly \$300 million, and to recover over \$68 million, due to collusion and misrepresentations in the bidding process for the St. Michael's Hospital Redevelopment Project in Toronto.
- **Confidential Arbitration** – Counsel to a general contractor in an arbitration relating to the construction of a major Canadian transmission line.
- **Construction Arbitration** – Counsel to a general contractor in respect of a complex mediation/prospective arbitration process regarding a subway extension project.
- **Metropolitan Toronto Condominium Corporation No. 590 v Registered Orders** – Counsel to the Metropolitan Toronto Condominium Corporation No. 590 in an application addressing responsibility for repair and maintenance of fireplace systems in a downtown Toronto high-rise condominium building. Succeeded in application to have the condominium's declaration amended to designate the chimney flues as exclusive use common elements.
- **Aecon Mining Construction Services v K+S Potash Canada GP** – Counsel to Aecon in complex litigation involving multiple parties and claims, in respect of the Legacy potash mine and production facility in Saskatchewan.
- **Re 144 Park Ltd** – Counsel to a purchaser in a successful proceeding to oppose a *Construction Lien Act* Trustee's attempt to disclaim several agreements of purchase and sale.

- **TSCC 2282 v Bay-Yorkville Developments** – Counsel to the defendant developer in proceedings alleging construction deficiencies in the construction of the Four Seasons Residences in Toronto.
- **Manga Hotels (Toronto) Inc v GE Canada Equipment Financing GP** – Counsel to GE Canada Equipment Financing GP in a dispute relating to the financing of a hotel construction project.
- **York University v Markicevic** – Counsel to plaintiff University in a successful trial of an action arising from fraud by senior university executives in connection with construction and maintenance work.
- **De Muelenaere v Great Gulf Homes Limited** – Counsel to the defendant developer in a class action alleging breach of contract and negligence relating to the installation of plumbing fixtures.
- **Khavari v Mizrahi** – Counsel to a developer in a dispute relating to the construction and management of two condominium developments. Successfully opposed a motion to compel the transfer of shares to the moving parties pursuant to an alleged trust, and opposed a motion to appoint an Inspector.
- **DBDC Spadina Ltd v Walton** – Counsel to a series of companies in proceedings involving a receivership over commercial real estate developments and efforts to recover \$110 million in funds improperly diverted. The matter involved dozens of contested motions and several appeals on a variety of commercial, real estate issue and construction law issues, including at the Supreme Court of Canada on the issue of “knowing assistance” by corporate actors.
- **Urbacon Limited v Henneberry** – Counsel to the plaintiffs in an action relating to the design and construction of a data centre.
- **DAT Villarboit Brantford LP v 2276844 Ontario Limited** – Counsel for Villarboit Holdings Limited in an application/counter-application to enforce rights under a series of contractual agreements relating to a real estate development project.
- **Greengate Village Limited v AM Candaras Associates Inc** – Counsel to the plaintiff in an action relating to deficiencies in a residential development project in Keswick.
- **Tan-Jen Ltd v De Pede** – Counsel to the responding parties in contempt proceedings arising from an action relating to custom-built moulds for concrete pre-cast.
- **Moon v Milborne** – Counsel to the defendant GG Eight Cumberland Inc in connection with an action relating to a condominium development project in downtown Toronto.
- **Steelcon Fabrication v City of Oshawa** – Counsel to a steel manufacturer in a successful hearing before the Building Code Commission.
- **Middlesex Condominium Corporation No 229 v 1510231 Ontario Inc** – Counsel to a property owner in a dispute relating to a collapsed retaining wall consisting of gabion baskets.
- **Rafat General Contractor Inc v 565 Gordon Baker Road Holdings Inc** – Counsel to a general contractor in a claim under the *Construction Lien Act*.
- **ECMI LP v Baywood Homes Partnership** – Counsel to the development Empire Communities in a dispute relating to a joint venture for a large residential community development.
- **The Regional Municipality of Peel v MMM Group Limited** – Counsel

to SNC Lavalin in connection with a dispute regarding the construction of a water main in Peel Region.

- **Construction Arbitration** – Counsel to a provincial government agency in an arbitration relating to a province-wide construction project.
- **Ontario Power Authority** – Counsel to the Ontario Power Authority in relation to the review of the construction and relocation of two gas plants by the Ontario legislature's Standing Committee on Justice Policy.
- **Peel Standard Condominium Corporation No. 776 v The Daniels Group Inc** – Counsel to SNC Lavalin in connection with a dispute relating to the construction of a condominium tower.
- **Construction Arbitration** – Counsel to a project manager in a series of disputes involving the design and construction of a mining project, including processing and power generation facilities. These disputes involved complicated engineering, project management and construction issues.
- **Sobeys Capital Incorporated v Sentinel (Sherbourne) Land Corporation** – Counsel to a developer in connection with dispute relating to a large mixed residential commercial project.
- **Niagara Escarpment Commission v The Joint Board** – Counsel for the successful respondent, Walker Aggregates Inc, in an application for judicial review of a decision of the Joint Board to grant conditional approval to Walker Aggregates to develop a quarry on land that falls within the Niagara Escarpment Plan area.
- **The State Group Inc v Quebecor World Inc** – Counsel to the defendant in a dispute relating to claims for liens under the *Construction Lien Act* in a large construction project.
- **Toronto (City) v WJ Holdings Ltd** – Counsel to a developer in a successful dismissal of an appeal by City regarding demolition permit issued by the Ontario Municipal Board.
- **Wycliffe Humberplex Limited v Humberplex Developments Inc** – Counsel to a developer in a dispute relating to residential subdivision development.
- **2201334 Ontario Limited v One Bloor Street East Limited** – Counsel to owner/developer of landmark condominium project at One Bloor Street East in a complex debt restructuring, including successful defense of attempted pre-arranged sale by receiver to the purchaser of the mortgage debt.
- **Riverside Developments Bobcaygeon Ltd v Bobcaygeon (Village)** – Counsel to a municipality in an appeal in a construction matter.
- **McPherson v Scully** – Counsel to the successful plaintiff in a trial relating to a breach of contract regarding the construction of nursing homes in Ontario.
- **Isobord Enterprises Inc v Stone & Webster Canada Ltd** – Counsel to a court-appointed receiver-manager in respect of a construction dispute.
- **Duffin Capital Corp v Ontario (Minister of Municipal Affairs and Housing)** – Counsel to a major land developer against the Province of Ontario in respect of a development planning area established under the *Ontario Planning and Development Act*.
- **Corsica Developments Inc v Richmond Hill Naturalists** – Counsel to community organization on a request for review of an Ontario Municipal Board decision approving an Official Plan Amendment permitting residential development at the David Dunlap Observatory in Richmond

Hill.

- **R v Live Nation** – Counsel to Live Nation in defence of charges under the Occupational Health and Safety Act relating to the 2012 stage collapse at Downsview Park. This included a multi-week trial with an eventual stay of charges under s. 11(b) of the Charter of Rights and Freedoms, and appearing at the related Coroner's Inquest. *(Prior to joining Lenczner Slaght.)*
- **Transformer Explosion** – Counsel to an electrical utility in defence of a class action and property damage claim following an explosion of a transformer at a large apartment building. *(Prior to joining Lenczner Slaght.)*
- **Professional Negligence Claim** – Counsel to an international engineering consulting firm defending a \$20+ million claim of professional negligence relating to the design and construction of a courthouse. *(Prior to joining Lenczner Slaght.)*
- **Green Building - Professional Negligence Defence** – Counsel to an engineering firm for claims related to the installation of green heating and cooling systems. *(Prior to joining Lenczner Slaght.)*
- **Construction Lien** – Counsel for solar energy developer resulting in the registration of construction liens over approximately 20 properties and related contractual dispute with co-developer of the solar energy projects. *(Prior to joining Lenczner Slaght.)*

SELECT PUBLICATIONS AND PRESENTATIONS

- **Construction Law Reception & Fireside Chat** – Andrew Parley looked forward to hosting the *Construction Law Reception & Fireside Chat* program with The Advocates' Society's Construction Law Practice Group. The program featured a special fireside chat with our very own Ian Binnie, where he shared his valuable experience and insights.
- **A 2023 Snapshot: Through the Lens of Lenczner Slaght** – Lenczner Slaght launches *A 2023 Snapshot*, a look at the most significant developments, decisions, business takeaways, and trends in litigation from the last year, across 15 practice areas. Revisit 2023 and look ahead to 2024 through the lens of our expert litigators.
- **Lessons From Canada and the UK: Lien Reform and Adjudication** – Andrew Parley moderated The Advocates' Society's Construction Law program "Lessons From Canada and the UK: Lien Reform and Adjudication" on everything you need to know about the construction legislative reforms coming to jurisdictions across Canada.
- **Stop the Clock: Preserving Rights and Relationships Through Tolling Agreements** – Andrew Parley and Drew Black co-authored the article "Stop the Clock: Preserving Rights and Relationships Through Tolling Agreements" which was published by On-Site Magazine. In this article, Andrew and Drew discuss the practical, cost-conscious solution of implementing a tolling agreement to defer a dispute when it arises.
- **Construction Law Update: Legal Project Management** – Andrew Parley was invited to speak at Canadian Lawyer's Construction Law Update on Legal Project Management. The panel will offer practical tips and strategies for construction lawyers on how to proactively manage a construction project from inception to completion.
- **Stop or Go: The Role of Mandatory and Prohibitive Injunctions in Construction Projects** – Andrew Parley authored the article "Stop or Go: The Role of Mandatory and Prohibitive Injunctions in Construction

Projects" which was published by On-Site Magazine. In this article, Andrew discusses the legal remedies available to keep a construction project moving.

- **Why the Construction Act's transition provisions are still important 3 years later** – Aaron I. Grossman and Brianne Westland authored the article *Why the Construction Act's transition provisions are still important 3 years later*, which was published by On-Site Magazine.
- **Top Appeals of 2019 from the Court of Appeal for Ontario** – Scott Rollwagen presented at the Ontario Bar Association's online program *Top Appeals of 2019 from the Court of Appeal for Ontario*. Scott discussed the implications of the decision in *The Guarantee Company of North America v RBC*.
- **OBA Construction and Infrastructure Law Section** – Scott Rollwagen shared his expertise on the panel *Construction Trusts: A?1 Asphalt and Competing Perspectives from the Construction and Insolvency Bars*. Scott explored the implications of the Ontario Court of Appeal decision in *The Guarantee Company of North America v Royal Bank of Canada* and provide insight on how it will impact both the construction and insolvency bars.

BLOG POSTS

- **What's Control Got to Do With It: Construction Owners are Employers Under the OHSA** – On November 10, 2023, when the Supreme Court of Canada ("SCC") released their decision in *R v Greater Sudbury (City)*, the internet responded with widespread panic because, for the first time, the Court has confirmed that a project owner is an employer under Ontario's *Occupational Health and Safety Act* ("OHSA" or the "Act").
- **Ontario Court of Appeal Restricts Municipality's Use of Interim Control By-Laws** – In a recent decision, *Hummel Properties Inc v Niagara-on-the-Lake (Town)*, the Ontario Court of Appeal affirmed that the Town of Niagara-on-the-Lake's enactment of an interim control by-law ("ICBL") was illegal. The decision, summarized below, has important implications for municipalities, developers, and builders across Ontario.
- **Partial Summary Judgement: a tool used to simplify** – In *Bisquip Leasing Corporation v Coco Paving Inc*, Bisquip Leasing Corporation ["Bishop"] brought a motion for summary judgment against Coco Paving Inc. ["Coco"] for unpaid invoices on various projects. Coco asserted a counterclaim against Bishop arising out of "deficient work" and an incident in which a gas line was allegedly struck by Bishop during excavation.
- **Imperfect Information on Summary Judgment** – In a recent pair of decisions in a solicitor-negligence action, Superior Court Justices Charney and Boswell confirmed that causation must be proved, not assumed – even on summary judgment motions.

SELECT NEWS ARTICLES

- **Top 10 Business Decisions of 2022–2023** – Peter Griffin, Rebecca Jones, and Scott Rollwagen were featured in Lexpert's Top 10 Business Decisions of 2022-23 for their success in the case *Annapolis Group Inc v Halifax Regional Municipality*, which represents an important decision that clarified the test for constructive taking. Rebecca Jones was further interviewed.
- **Resolving Construction Disputes Mid-Project** – In Lexpert's Special Edition on Litigation, Andrew Parley was interviewed for an article feature on construction disputes. Andrew provided his expert insights on the use of mediation mid-project in construction matters to keep projects on track when disputes arise.
- **Chambers Canada Recognizes Lenczner Slaght as a Top-Tier Litigation Firm** – Canada's leading litigation firm and its expert litigators continue to be recognized by world-renowned directory, Chambers & Partners.
- **Lenczner Slaght Litigators Recognized as Best Lawyers in Canada** – In the latest edition of *Best Lawyers in Canada*, 41 of our expert litigators are recognized for their expertise across 24 practice areas. The following lawyers have also been recognized as "Lawyer of the Year" for receiving the highest overall peer-feedback in their practice areas in Toronto.
- **Lenczner Slaght Litigators Recognized Among the Best Lawyers in Canada** – In the latest edition of *Best Lawyers in Canada*, 39 of our expert litigators are recognized by their peers for their expertise across 24 practice areas.
- **Court Says Trial Should Decide Whether Surety Bonds Can Be Rescinded Due to False Representation** – Matthew B. Lerner speaks to Law Times about the latest decision in *Urban Mechanical Contracting Ltd v Zurich Insurance Company Ltd*.
- **Lenczner Slaght Litigators Elected to The Advocates' Society's Leadership** – We are pleased to announce that Brendan Morrison, Christopher Yung, Paul-Erik Veel, Andrew Parley, Nina Bombier, and Anne Posno will be serving prominent executive positions at The Advocates' Society, a preeminent organization dedicated to promoting effective advocacy and access to justice.
- **Lenczner Slaght Litigators Appointed to The Advocates' Society's Leadership** – We are pleased to announce that Brian Kolenda, Andrew Parley, Shara Roy, Nina Bombier, Larry Thacker and Anne Posno have been elected to prominent leadership positions at The Advocates' Society, a preeminent organization dedicated to promoting effective advocacy and access to justice.
- **Lexpert Recognizes Lenczner Slaght's Leading Infrastructure Lawyers** – Our expert litigators continue to be recognized as foremost litigators in their fields by peers and senior members of the legal profession.
- **Best Lawyers in Canada Recognizes Lenczner Slaght's Litigation Expertise** – Lenczner Slaght is proud to announce that 33 of our expert litigators are recognized in *Best Lawyers in Canada 2021*. Our lawyers received a total of 128 rankings, up from 100 in 2020.
- **Best Lawyers in Canada Recognizes Lenczner Slaght with 100 Rankings** – In the latest edition of *Best Lawyers in Canada*, 28 Lenczner Slaght lawyers earned a total of 100 rankings, up from 86 in 2019.
- **Provincially created trusts deemed valid** – Matthew B. Lerner and Scott Rollwagen were interviewed by Law Times in their featured story on the Court of Appeal's recent landmark decision in *The Guarantee Company of North America v Royal Bank of Canada*.

The decision upset the long-standing conventional wisdom among bankruptcy and insolvency practitioners in Ontario about the fate of provincially-created statutory trusts in bankruptcy. Matt and Scott acted for the successful appellant, The Guarantee Company of North America.

➤ **York University Succeeds in Fraud Claim Against Former Executive**

– Following a lengthy trial, the Ontario Superior Court of Justice has determined that former York employees played key roles in several significant frauds.