

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

- Best Lawyers in Canada (2013-2020)
Construction Law, Corporate & Commercial Litigation, Health Care Law, Insurance, Medical Negligence

SELECT CASES

- **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.
- **Urbacou 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.

SELECT PUBLICATIONS AND PRESENTATIONS

- **OBA Construction and Infrastructure Law Section** – Scott Rollwagen will share his expertise on the panel *Construction Trusts: A?1 Asphalt and Competing Perspectives from the Construction and Insolvency Bars*. He will explore 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

- **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

- **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.