

AUGUST #, 2025

## Trillium v. Marydel: Clarifying 'Price' Under Ontario's *Construction Act*

### Overview

In *Trillium Masonry Group Inc. v. Marydel Homes (Beaverton) Inc. et al*,<sup>1</sup> the Ontario Superior Court of Justice considered whether an outstanding debt can be included as part of a contract “price” under the *Construction Act* (the “**Act**”).<sup>2</sup>

The Court held that parties are free to set their own price for lienable services which can be enforced through the lien regime.<sup>3</sup> The Act does not prohibit a lien claimant from registering a lien for the full amount of an agreed-upon price for a lienable service, even if that price includes an outstanding debt.<sup>4</sup>

### Factual Background

Trillium Masonry Group Inc. (“**Trillium**”) entered into two contracts with Marydel Homes (Beaverton) Inc. (“**Marydel**”) to provide masonry services for the construction of homes in Beaverton, Ontario.<sup>5</sup>

The first contract, signed in 2016, covered 43 lots but excluded Lot 121, which would be completed after the other lots were finished (the “**First Contract**”).<sup>6</sup> Trillium later alleged that Marydel owed \$193,191.70 for Trillium’s work under the First Contract.<sup>7</sup> However, Trillium did not register any liens for the lots covered by the First Contract before their lien rights expired.<sup>8</sup>

In 2022, Trillium agreed to perform masonry work on Lot 121 for Marydel (the “**Second Contract**”).<sup>9</sup> The Second Contract included a price provision that stipulated that “*the balance owed of \$193,191.70 [for services rendered by Trillium under the First Contract] shall be forwarded to Lot 121 and shall form part of the contract price*”.<sup>10</sup> Trillium later registered a lien on Lot 121 for the contract

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<sup>1</sup> *Trillium Masonry Group Inc v Marydel Homes (Beaverton) Inc et al*, 2025 ONSC 4194 [Trillium].

<sup>2</sup> *Construction Act*, RSO 1990, c C30 [Construction Act].

<sup>3</sup> *Trillium*, *supra* note 1 at para 43.

<sup>4</sup> *Ibid* at para 40.

<sup>5</sup> *Ibid* at paras 3 and 7.

<sup>6</sup> *Ibid* at para 3.

<sup>7</sup> *Ibid* at para 5.

<sup>8</sup> *Ibid* at para 5.

<sup>9</sup> *Ibid* at para 7.

<sup>10</sup> *Ibid* at para 7.

price, comprising an amount for the masonry services on Lot 121 as well as the debt owing under the First Contract.<sup>11</sup>

Marydel brought a motion to discharge the lien.<sup>12</sup> Alternatively, Marydel sought to reduce its amount by deducting the outstanding debt carried forward from the First Contract, on the basis that services supplied under the First Contract were not lienable against Lot 121.<sup>13</sup>

### The Court's Analysis

The Court held that the Act provides parties with the freedom to set a price for lienable services and allows lien claimants to register a lien for this mutually agreed-upon price.<sup>14</sup> The Court found that nothing in the Act prohibited parties from registering a lien for a contract price that included an old debt.<sup>15</sup> Accordingly, the Court dismissed Marydel's motion.<sup>16</sup>

In reaching its conclusion, the Court examined subsection 14(1) of the Act,<sup>17</sup> which provides:

*A person who supplied services or materials to an improvement...has a lien upon the interest of the owner in the premises improved for the price of those services or materials.*<sup>18</sup>

To interpret the meaning of "price" under subsection 14(1), the Court referred to the definition in section 1 of the Act,<sup>19</sup> which defines "price" as: "*the contract or subcontract price*" that was "*agreed on between the parties*".<sup>20</sup> The Court reasoned that by incorporating this definition of "price" into subsection 14(1), the Legislature intended to provide parties with the right to register a lien based on an agreed price for lienable services.<sup>21</sup>

The Court further held that subsection 17(1) which limits a lien to the amount "*owed in relation to the improvement*",<sup>22</sup> does not prevent parties from agreeing to include an outstanding debt as part of the contract price for a lienable service. Rather subsection 17(1) simply limits the value of the lien to the difference between what has already been paid, if any, and the price that was established in the contract.<sup>23</sup>

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<sup>11</sup> *Ibid* at para 11.

<sup>12</sup> *Ibid* at paras 1.

<sup>13</sup> *Ibid* at paras 1, 19.

<sup>14</sup> *Ibid* at para 43.

<sup>15</sup> *Ibid* at para 40.

<sup>16</sup> *Ibid* at para 62.

<sup>17</sup> *Ibid* at para 26.

<sup>18</sup> *Construction Act*, *supra* note 2, s 14(1).

<sup>19</sup> *Trillium*, *supra* note 1 at para 23.

<sup>20</sup> *Construction Act*, *supra* note 2, s 1.

<sup>21</sup> *Trillium*, *supra* note 1 at para 44.

<sup>22</sup> *Construction Act*, *supra* note 2, s 17(1).

<sup>23</sup> *Trillium*, *supra* note 1 at para 42.

The Court distinguished several authorities cited by Marydel, noting that in those cases, the disputed lien amounts did not form part of a contract price but were merely claims for separate non-lienable services or materials.<sup>24</sup> By contrast, this case involved an agreement that incorporated a prior debt into the agreed-upon contract price.<sup>25</sup>

Marydel also raised broader policy concerns, arguing that the Court's interpretation could significantly disrupt the construction lien regime by allowing parties to secure unrelated debts through liens and potentially circumvent the irrevocability of lien discharges under section 48 of the Act.<sup>26</sup> It also warned that this approach could unfairly disadvantage other lien claimants by inflating one contractor's claim at the expense of others.<sup>27</sup> The Court dismissed these policy concerns as speculative, as they were premised on the rare circumstance where an owner or general contractor would contract with a person to revive an expired or discharged lien.<sup>28</sup>

### Conclusion

This case provides important clarification on the meaning of "price" under the Act and by extension the scope of lien rights. The Court's interpretation affirms that contractors and subcontractors may secure historical debts through the lien regime, provided those debts are incorporated into a new contract price for lienable services. The decision also reinforces the principle that courts must give effect to the expressed intentions of sophisticated commercial parties. Given the judiciary's willingness to uphold contractual autonomy, parties should exercise caution when negotiating and agreeing to contract price terms.

This article is for informational purposes only and is not intended to constitute legal advice or an opinion on any issues contained therein.

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<sup>24</sup> *Ibid* at paras 47, 55.

<sup>25</sup> *Ibid* at para 55.

<sup>26</sup> *Ibid* at para 56.

<sup>27</sup> *Ibid* at para 56.

<sup>28</sup> *Ibid* at para 57.