

March 3, 2022

Settlor Beware: A Full Settlement of Construction Claims May Waive Your Right to Holdback Funds

Key Takeaway

The existence of the statutory holdback and trust obligations in the *Construction Lien Act*, now called the *Construction Act* (the “**Act**”), does not separate holdback funds and entitlement to release of holdback, from a settlement of all claims. If the settlement agreement or release documents are sufficiently broad, there will be no further entitlement of a contractor to receipt of holdback funds.

The Background and Result

In December 2020, the Ontario Court of Appeal heard the matter between 614128 Ontario Ltd. (Trisan Construction) v. Toronto (City).¹

Trisan Construction is a general contractor who contracted with the City for five watermain and sewer projects. Trisan commenced five separate actions for each project alleging additional amounts owing for extras and delay. The parties entered into a settlement agreement in respect of all actions for approximately \$1.2M (plus HST) to resolve all claims.

At the time of settlement, two of the five projects had holdbacks amounting to \$174,381.14 (plus HST). Trisan claimed they were entitled to these holdbacks in addition to the settlement sums because of the statutory trust created by the *Act*. The City disagreed and in fact applied the holdbacks to the settlement funds. The City claimed these funds were not impressed with trust obligations during the time of the settlement because of the expiration of Trisan’s lien rights.

Trisan appealed. While the Court of Appeal did not address the legal question regarding the trust funds, they instead found there was a full settlement of all claims, including any entitlement to holdback funds retained by the City.



[Joshua Strub](#), Partner
T. 647-924-2264
jstrub@margiestrub.com



[Simren Sihota](#), Associate
T. 647-794-1564
ssihota@margiestrub.com

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

¹ [2020 ONCA 803](#).